

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION - - - IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION Case No. 1:17-MD-2804 APPLIES TO ALL CASES Hon. Dan A. Polster Case No. 1:17-MD-2804 - - - January 17, 2019 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER CONFIDENTIALITY REVIEW Videotaped deposition of DOUGLAS BOOTHE, held at 250 Hudson Street, New York, New York, commencing at 9:00 a.m., on the above date, before Marie Foley, a Registered Merit Reporter, Certified Realtime Reporter and Notary Public. - - - GOLKOW LITIGATION SERVICES 877.370.3377 ph 917.591.5672 fax Deps@golkow.com</p>	<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 ROBBINS GELLER RUDMAN & DOWD LLP 4 BY: AELISH M. BAIG, ESQUIRE 5 DOREY ANTULLIS, ESQUIRE 6 Post-Montgomery Center 7 One Montgomery Street, Suite 1800 8 San Francisco, California 94104 9 415.288.4545 10 aelishb@rgrdlaw.com 11 Representing Plaintiff 12 13 14 MORGAN LEWIS & BOCKIUS, LLP 15 BY: TINOS DIAMANTATOS, ESQUIRE 16 LIZA B. FLEMING, ESQUIRE 17 77 West Wacker Drive 18 Chicago, Illinois 60601-5094 19 312.324.1145 20 tinos.diamantatos@morganlewis.com 21 liza.fleming@morganlewis.com 22 Representing Rite Aid 23 24</p>
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19	ALLERGAN_MDL_00676546 to
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<p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>4 Page Line</p> <p>5 - -none- -</p> <p>6</p> <p>7</p> <p>8 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>9 Page Line</p> <p>10 - -none- -</p> <p>11</p> <p>12</p> <p>13 STIPULATIONS</p> <p>14 Page Line</p> <p>15 - -none- -</p> <p>16</p> <p>17</p> <p>18 QUESTIONS MARKED</p> <p>19 Page Line</p> <p>20 - -none- -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 - - -</p> <p>2 9:07 a.m.</p> <p>3 New York, New York</p> <p>4 - - -</p> <p>5 THE VIDEOGRAPHER: We are now on</p> <p>6 the record.</p> <p>7 My name is Tyler Crotty. I'm a</p> <p>8 videographer for Golkow Litigation</p> <p>9 Services.</p> <p>10 Today's date is January 17th,</p> <p>11 2019, and the time is approximately</p> <p>12 9:07 a.m.</p> <p>13 This video deposition is being</p> <p>14 held at 250 Hudson Street, New York,</p> <p>15 New York, in the matter of National</p> <p>16 Prescription Opiate Litigation MDL for</p> <p>17 the court of the Northern District of</p> <p>18 Ohio.</p> <p>19 The deponent today is Doug</p> <p>20 Boothe.</p> <p>21 And counsel will be noted on the</p> <p>22 stenographic record.</p> <p>23 Our court reporter is Marie</p> <p>24 Foley, and she will now swear in the</p>
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<p>1 witness.</p> <p>2 - - -</p> <p>3 DOUGLAS BOOTHE, the Witness herein, having</p> <p>4 been first duly sworn by a Notary</p> <p>5 Public in and of the State of New</p> <p>6 York, was examined and testified as</p> <p>7 follows:</p> <p>8 EXAMINATION BY</p> <p>9 MS. BAIG:</p> <p>10 Q. Good morning, Mr. Boothe.</p> <p>11 A. Good morning.</p> <p>12 Q. I'm Aelish Baig.</p> <p>13 Can you please state your full</p> <p>14 name and address for the record?</p> <p>15 A. Sure. It's Douglas Steven</p> <p>16 Boothe, [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 Q. And, have you had your</p> <p>19 deposition taken before?</p> <p>20 A. Yes.</p> <p>21 Q. How many times?</p> <p>22 A. Over a dozen.</p> <p>23 Q. Okay. So, fair to say that</p> <p>24 you're familiar with the procedures?</p>	<p>1 A. Yes.</p> <p>2 Q. All right. What did you do to</p> <p>3 prepare for today's deposition?</p> <p>4 A. I met with our attorneys</p> <p>5 yesterday.</p> <p>6 Q. Okay. How many times did you</p> <p>7 meet with your attorneys?</p> <p>8 A. Yesterday and --</p> <p>9 THE VIDEOGRAPHER: Counsel. I'm</p> <p>10 sorry. I don't know if I'm getting an</p> <p>11 audio feed. We might have -- we might</p> <p>12 have to go off the record.</p> <p>13 MS. BAIG: Okay.</p> <p>14 THE VIDEOGRAPHER: We're going</p> <p>15 off the record.</p> <p>16 The time is 9:09 a.m.</p> <p>17 (Recess taken.)</p> <p>18 THE VIDEOGRAPHER: We're going</p> <p>19 back on the record.</p> <p>20 The time is 9:12 a.m.</p> <p>21 BY MS. BAIG:</p> <p>22 Q. So, how many times did you meet</p> <p>23 with your attorneys in order to prep for</p> <p>24 this depo?</p>

1 A. Sure. So, I met yesterday and
2 we met one time over the summer in June or
3 July-ish time frame and some email
4 exchanges, but largely just two -- two
5 times.

6 Q. Okay. And, you had no meetings
7 over the phone about preparation for this
8 deposition?

9 A. No, just logistics.

10 Q. Okay. Did you read any
11 deposition transcripts in preparation for
12 this depo?

13 A. No.

14 Q. Did you talk to anybody at
15 Actavis in preparation for this
16 deposition?

17 A. No.

18 Q. Did you review any documents in
19 preparation for this deposition?

20 A. Yes.

21 Q. And, those were documents from
22 your files when you worked at Actavis?

23 A. They weren't exclusively from my
24 files. They were other documents as well.

1 Q. What -- what documents do you
2 recall looking at in preparation for your
3 deposition?

4 A. It would be better if you just
5 want to show me a document, I'd be happy
6 to comment on it.

7 Q. But my question to you is what
8 documents do you recall looking at in
9 preparation for your deposition?

10 A. There were some documents from
11 regulatory team, some FDA communications,
12 some sales and training materials.

13 Q. Anything else that you recall?

14 A. No.

15 Q. Email?

16 A. There -- those were emails as
17 well as some attachments, yes.

18 Q. Are you familiar with the
19 complaints on file in this action?

20 A. To a certain extent, yes.

21 Q. And, what's your understanding
22 of what the allegations are?

23 A. I'm really not a lawyer. So
24 you'd have to explain it to me.

1 Q. You have no understanding of
2 what this case is about?

3 A. It's some sort of a class action
4 suit brought by plaintiffs about I'll say
5 marketing practices of branded
6 pharmaceutical companies.

7 Q. And, do you know what the gist
8 of the wrongdoing alleged is?

9 A. Again, allegations of marketing
10 activities by branded pharmaceutical
11 companies, is my understanding.

12 Q. Allegations of misleading
13 marketing activities.

14 Is that your understanding, or
15 no?

16 A. Again, you're -- you're asking
17 me. I told you the answer. I think it's
18 my understanding as it relates to
19 marketing activities of branded
20 pharmaceutical companies.

21 Q. Okay. You have no further
22 understanding of what this case is about.

23 Is that right?

24 A. I'd be happy to answer a

1 question.

2 I don't know.

3 Q. You have -- okay.

4 At what company did you first
5 work on opioids?

6 A. What do you mean by work on
7 opioids?

8 Can you describe that for me,
9 please?

10 Q. Do you understand what an opioid
11 is?

12 A. Sure.

13 Q. Okay. When was the first time
14 that you worked at a pharmaceutical
15 company that was selling opioids?

16 A. My first pharmaceutical job was
17 with Pharmacia. I'm not aware if they did
18 or didn't sell opioids. That was in 2001.
19 I went to Alpharma in 2004, and Alpharma
20 had in its generic portfolio several
21 controlled substances. Some may have been
22 opioids, but we had other controlled
23 substances, and Alpharma also had a
24 branded long-acting opioid product, which

<p style="text-align: right;">Page 25</p> <p>1 is Kadian extended-release, long-acting 2 morphine product, capsule. 3 Q. And, what was your position at 4 Pharmacia? 5 A. I joined Pharmacia in 2001. I 6 was the vice-president of e-business and 7 emerging technologies. 8 Q. And you kept that position until 9 2004? 10 A. I was there until the spring of 11 2013. Pfizer acquired Pharmacia. So when 12 that transaction closed, which I believe 13 was in April, I exited the company. 14 2013 -- sorry. 2003. 15 Q. Okay. 16 A. 2001 to 2003. 17 Q. And, what was your first 18 position at Alpharma? 19 A. I joined in January of 2004. I 20 was the vice-president and general manager 21 of our solid oral dose business, generics. 22 Q. And, what additional positions 23 did you hold at Alpharma? 24 A. Within a year there, I took over</p>	<p style="text-align: right;">Page 26</p> <p>1 really leadership for the entire generics 2 business, so it included the solid oral 3 dose, the semisolids liquid business, and 4 our over-the-counter business, generics 5 business. Again, all over-the-counter 6 general label products. 7 Q. And, when did you leave 8 Alpharma? 9 A. Well, Alpharma was acquired by 10 Actavis. That acquisition occurred at the 11 end of 2005. So I stayed on with the new 12 entity, which was called Actavis US, and I 13 was there from 2006 through 2012 when 14 Watson Pharmaceutical acquired global 15 Actavis, including the US business. 16 Q. And, what was your position at 17 Actavis? 18 A. I had several roles. When the 19 transaction first closed in 2006, I was 20 the vice-president sales and marketing, I 21 believe. And then I became chief 22 commercial officer in 2007. And in 2008 I 23 was appointed CEO of Actavis US, and that 24 expanded to CEO of Actavis Americas. So</p>
<p style="text-align: right;">Page 27</p> <p>1 from 2008 to 2012, I was the CEO of 2 Actavis in the U.S. and Americas. 3 Q. And, what -- what happened in -- 4 what -- where did you go in 2012? 5 A. So, again, so, Watson 6 Pharmaceuticals acquired Actavis. That 7 was announced in April of 2012. 8 Transaction closed, actually, October 9 30th, the day of Hurricane Sandy, in 2012. 10 I stayed with the company through the end 11 of the calendar year, as per my agreement, 12 and then I -- I exited in January, and I 13 started two weeks later at Perrigo 14 Pharmaceuticals January 2013. 15 Q. And, what's your position at -- 16 are you still at Perrigo? 17 A. No. 18 Q. What was your position at 19 Perrigo? 20 A. I was the executive 21 vice-president and general manager of the 22 generic and specialty pharma business. 23 They call it the prescription business, 24 but it was generics and specialty pharma.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And, were there opioids in the 2 portfolio at Perrigo? 3 A. Yes. 4 Q. Which ones? 5 A. We sold a generic of -- we 6 brought to market a generic of Exalgo, 7 which I believe is either hydromorphone or 8 hydrocodone. We had other controlled 9 substances. I'm trying to think if we had 10 other opioids, but we had controlled 11 substances. 12 Q. And, what was your next 13 position? 14 A. I left Perrigo in July of 2016, 15 and I moved to Impacts Laboratories in 16 August of 2016. I was the president of 17 the generics division at Impacts 18 Laboratories from August 2016 through May 19 of 2018. 20 Q. And, did you take another 21 position after that? 22 A. Yes. I exited May of 2018, 23 which is when the Amneal acquisition 24 closed, and I started a position two weeks</p>

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1 ago.
2 Q. And, where are you working now?
3 A. I'm the president and chief
4 executive officer of Acorn
5 Pharmaceuticals.
6 Q. And, were there opioids in the
7 portfolio at Impacts?
8 A. Yes.
9 Q. Which ones?
10 A. Again, the generics business we
11 sold -- manufactured and distributed
12 generic hydromorphone, hydrocodone,
13 hydromorphone. We actually had a generic
14 for Kadian, which again is a morphine
15 product at Alpharma. I think we also had
16 a generic for Avinza, which is another
17 generic morphine extended-release product.
18 Q. And, are there --
19 A. Sorry. Oxycodone or -- Opana
20 was oxymorphone. That was -- we had a
21 generic of that.
22 Q. Okay. And, are there opioids in
23 the portfolio at Acorn Pharmaceutical?
24 A. You know, I'm still learning the

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1 product line there. I believe we --
2 again, we have controlled substances.
3 I've toured the facilities and the vaults.
4 Not a significant part of the business.
5 I believe we have -- Acorn's
6 mostly injectable products and sterile
7 ophthalmics. So we may have some
8 hospital-based controlled substance
9 products, but I'm not a hundred percent
10 sure on the portfolio still.
11 Q. When you were at Alpharma as VP,
12 who did you report to?
13 A. I joined the company in 2004.
14 My boss was -- was Fred Lynch.
15 Q. And he did not come over to
16 Actavis when you did, correct?
17 A. Correct.
18 Q. And, did that reporting
19 structure change at all while you were at
20 Alpharma?
21 A. No.
22 Q. And, when you started at
23 Actavis, who did you report to?
24 A. I reported to Sigurdur Olafsson.

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1 Q. Is that Siggi?
2 A. Correct.
3 Q. And, what was Sigurdur
4 Olafsson's position?
5 A. 2006 he was president of Actavis
6 US.
7 Q. And, what company did he work
8 for? Actavis?
9 A. Well, he came from Actavis,
10 yeah.
11 Q. Did he come from the company
12 Actavis US?
13 A. Again, that was his position.
14 Again, I don't know where he was in terms
15 of his employment standpoint, if he was
16 part of the parent or if he was part of --
17 but he lived in the United States.
18 Q. And, who did Sigurdur Olafsson
19 report to?
20 A. He reported to the Actavis CEO
21 at the time, Robert Wessman.
22 Q. And, who did Robert Wessman
23 report to?
24 A. He report to the board. I mean,

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1 Robert was the CEO.
2 Q. The board of Actavis?
3 A. The board of Actavis Group that
4 was Icelandic-based. So, again, I don't
5 know what the -- if it was -- I don't know
6 what the tag line is for an
7 Icelandic-based company. But, yes,
8 Actavis Group.
9 Q. But, was that board different
10 than the board of Allergan?
11 MS. WELCH: Objection to form.
12 A. Yes.
13 Q. And, who was on the board of
14 Actavis Group at that time?
15 A. In what year?
16 Q. 2006.
17 A. I will say a bunch of
18 Icelandics, Icelanders. Thor Bjorgolfsson
19 was the chairman. He was the primary
20 shareholder and then -- I can't -- I would
21 not do a good job pronouncing their names.
22 I actually never participated in any board
23 meetings at Actavis. I did -- at Actavis
24 Group, actually, is what it was called. I

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1 did come to a board meeting at the end and
2 was introduced to several board members,
3 but I'd be hard-pressed to remember their
4 names.

5 Q. And Actavis -- when was the
6 merger between Actavis and Allergan?

7 A. There was no merger between
8 Actavis and Allergan.

9 Q. What is the structure, to your
10 understanding, between Actavis and
11 Allergan when you were there?

12 A. Again, there was no Allergan.

13 I was there til 2012. So,
14 Watson Pharmaceuticals is the company that
15 acquired Actavis. Watson Pharmaceuticals,
16 after the transaction, took on the Actavis
17 name. So I was -- I left the company at
18 some point either 2013 or 2014. I believe
19 that's when Actavis and Allergan combined.

20 Q. Actavis and Allergan combined in
21 2014?

22 A. I don't know the date.

23 MS. WELCH: Objection;
24 foundation.

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1 BY MS. BAIG:

2 Q. Who hired you at Actavis?

3 A. Again, I was already there at
4 Alpharma, but essentially Siggi kept me
5 on.

6 Q. And, did you report to Siggi for
7 the entire time?

8 A. No.

9 Q. How did that reporting structure
10 change?

11 A. Later in 2006, one of the senior
12 people at Actavis Group exited. So Siggi
13 went back to be deputy chairman, or deputy
14 CEO. And, so, when Siggi left the U.S.
15 business, went back to Iceland,
16 essentially there were four people who
17 formed a management committee for the
18 U.S., and I reported to Robert Wessman
19 directly.

20 Q. And Robert Wessman's position
21 was?

22 A. He was the chief executive
23 officer of Actavis Group.

24 Q. And he reported to?

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1 A. The board.

2 Q. The board of the Actavis Group?

3 A. Correct.

4 Q. Why did you leave Actavis?

5 A. I -- again, when the transaction
6 was completed, Watson basically took over
7 the -- they acquired the Actavis Group.
8 So, Watson management team took over the
9 business and integrated it. They didn't
10 have a role for me.

11 Q. Did you ever use personal
12 computers or other devices, such as phones
13 or iPads, for work purposes?

14 A. What time frame?

15 Q. When you worked for Actavis.

16 A. Yes.

17 Q. And, when you were preparing for
18 this deposition, did you review any -- any
19 of the documents that would have come from
20 those types of devices?

21 MS. WELCH: Objection;
22 foundation.

23 A. Again --

24 MS. WELCH: And form.

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1 A. -- the personal computer that I
2 used was a company computer. So when I
3 left the company, I gave it back.

4 Q. And, was the phone a company
5 phone?

6 A. Yes.

7 Q. And, did you use text messaging
8 when you worked at Actavis at all?

9 A. Yes.

10 Q. And, did you review any text
11 messages in preparation for your
12 deposition today?

13 A. No.

14 Q. Do you know whether those text
15 messages have been produced?

16 MR. DIAMANTATOS: Objection;
17 foundation.

18 A. I'm not aware.

19 Q. Did you ever use an instant
20 messenger program for work-related
21 communications?

22 A. No.

23 Q. Was your compensation, generally
24 in the positions we've just discussed,

1 based on your ability to maximize sales of
2 the company's drugs?

3 MR. DIAMANTATOS: Objection to
4 form.

5 A. No. That was a component, but
6 that wasn't exclusively that compensation.

7 Q. Would you say that it was a
8 significant component?

9 MS. WELCH: Objection to form.

10 MR. DIAMANTATOS: Objection to
11 form.

12 A. Could you repeat the question,
13 please?

14 Q. Was your compensation based on
15 your ability to maximize sales of the
16 company's drugs? Was that a significant
17 component of your compensation?

18 MS. WELCH: Objection to form.

19 A. No.

20 Q. What was your compensation based
21 on?

22 A. Again, it varied over the years,
23 but essentially my compensation, and most
24 employees of the company, compensation was

1 based on a base salary, and then there
2 would be a bonus component. The bonus
3 would be delivered based on performance
4 against annual goals. Those annual goals
5 of Actavis were largely around EBITDA, so
6 earnings before -- earnings before
7 interest, taxes, depreciation and
8 amortization. So revenue, of course,
9 helps to determine EBITDA, but not
10 exclusively. And then, again, both myself
11 and individually folks in my organization
12 have specific metrics that would also
13 factor into the bonus calculation, as well
14 as personal activities, you know, could be
15 around quality, learning, training,
16 compliance.

17 Again, we -- one of my roles was
18 every year was to define those targets and
19 measurements and to work that through or
20 negotiate it with the parent company as to
21 what would be the financial targets and
22 what would be the personal targets and
23 what would be the organizational targets.

24 But, essentially, the -- at my

1 level, base salary would be a certain
2 number and my bonus target would be
3 anywhere -- the bonus target could be
4 around 30, 40 percent of my base. Could
5 be zero. We had years where it was zero
6 and it could pay at up to maybe 120, 150
7 percent of the target.

8 And, as you went down the
9 organization, those bonus targets were a
10 smaller percentage of the base, no more
11 than 30 percent.

12 Q. And, when you say 120 to 150
13 percent of the target, what do you mean by
14 target?

15 A. So, again, if my base salary
16 was, just for math, it was \$500,000 and my
17 target was 40 or 50 percent, it could be
18 paid out actually at zero, subject to, you
19 know, company not achieving its threshold
20 targets, or if we did better than the
21 target, it could be paid out up to 120 or
22 maybe even 150 percent. I think 120 was
23 the number. So, rather than 50 percent,
24 it could be as high as 60 percent,

1 potentially.

2 Q. Now, when you say if we did
3 better than the target, what do you mean
4 by target?

5 A. Again, the targets were
6 dependent on the year, but essentially it
7 was around EBITDA. So if the EBITDA
8 target was a hundred million and we did
9 110 million, that would have been slightly
10 better than target. If the target was 100
11 million and we did 80 million, it would be
12 less than target. And we had a threshold.
13 So effectively, if you were less than 80
14 percent of the target, the bonus would be
15 zero, subject to the management
16 discretion.

17 Q. And, who at parent company would
18 you work those out with?

19 A. Again, it would be, you know,
20 budgeting is a negotiation, but
21 essentially it would be ultimately with my
22 boss, Robert Wessman, the CEO, or Siggi,
23 or over time it was a different CEO. We
24 had Claudio Albrecht.

<p style="text-align: right;">Page 41</p> <p>1 So, we would negotiate -- we</p> <p>2 would come up with targets for the</p> <p>3 regions, targets for the business, you</p> <p>4 know, based on forecasting, based on</p> <p>5 bottoms-up planning, based on cost</p> <p>6 assumptions, based on pricing assumption,</p> <p>7 based on new product activity, based on</p> <p>8 other strategic priorities. We would</p> <p>9 basically do the goal-setting work either</p> <p>10 at the end of the calendar year or the</p> <p>11 first month or two in the next calendar</p> <p>12 year, and that would be the basis for the</p> <p>13 targets both for myself, and then I would</p> <p>14 cascade those targets down through my</p> <p>15 organization.</p> <p>16 Q. Did you receive performance</p> <p>17 evaluations while you were at Actavis?</p> <p>18 A. Some. I would say that Mr.</p> <p>19 Wessman was not the best at performance</p> <p>20 reviews. But yes, sometimes I would get</p> <p>21 verbal review. I would certainly have a</p> <p>22 year-end review about performance</p> <p>23 associated with, you know, your bonus</p> <p>24 and/or your raise.</p>	<p style="text-align: right;">Page 42</p> <p>1 I see you have per4ma. So</p> <p>2 that's one of the platforms we used. And,</p> <p>3 again, Mr. -- Mr. Albrecht, who was the</p> <p>4 CEO after -- after -- actually, no. It</p> <p>5 was Wessman and then actually Sigg was</p> <p>6 the CEO for a few years and then Mr.</p> <p>7 Albrecht. Claudio actually was probably</p> <p>8 the best in terms of doing performance</p> <p>9 reviews, but I would prepare a performance</p> <p>10 review every year and submit it as part of</p> <p>11 the -- part of our management process.</p> <p>12 MS. BAIG: Okay. Let's have</p> <p>13 this document marked as Exhibit 1,</p> <p>14 please.</p> <p>15 (Boothe Exhibit 1, Actavis</p> <p>16 per4ma period covered by appraisal</p> <p>17 2008, Bates No.</p> <p>18 Acquired_Actavis_01541043 to</p> <p>19 ALLERGAN_MDL_00128730, was marked for</p> <p>20 identification, as of this date.)</p> <p>21 BY MS. BAIG:</p> <p>22 Q. That is a document Bates stamped</p> <p>23 Acquired_Actavis_01541043 through -- well,</p> <p>24 it starts with that Bates stamp number and</p>
<p style="text-align: right;">Page 43</p> <p>1 it ends with ALLERGAN_MDL_00128730. And</p> <p>2 I'll represent to you that this is a</p> <p>3 collection of -- of performance reviews</p> <p>4 that we were able to collect from the</p> <p>5 production of documents that we have.</p> <p>6 Can you just take a quick look</p> <p>7 at this document and -- and let me know if</p> <p>8 this appears to be a series of performance</p> <p>9 evaluations from your time at Actavis?</p> <p>10 MS. WELCH: Objection to form.</p> <p>11 A. From what you've handed me, it</p> <p>12 looks like it's two years, 2008 and 2009.</p> <p>13 So it's not really the full duration of my</p> <p>14 time at Actavis.</p> <p>15 Q. And, do you recall seeing these</p> <p>16 documents while you were at Actavis?</p> <p>17 A. Yes.</p> <p>18 Q. And if you look at the second</p> <p>19 page of the document, you see for 2009</p> <p>20 under Objective Number 1 it says:</p> <p>21 Deliver 2009 Actavis Inc. recovery by</p> <p>22 achieving budget number for revenue,</p> <p>23 EBITDA and cash flow.</p> <p>24 Do you see that?</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. And it says: For U.S. budget</p> <p>3 551 million in revenues, 171.8 million in</p> <p>4 EBITDA, excluding exceptional items, and</p> <p>5 36.3 million in cash flow.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And these were the</p> <p>9 objectives that you -- would these have</p> <p>10 been the targets that we just discussed?</p> <p>11 A. Again, if you look at the</p> <p>12 document, it's up to five objectives here.</p> <p>13 So this was the first of five.</p> <p>14 Q. Sure.</p> <p>15 These would be among the targets</p> <p>16 that we just discussed?</p> <p>17 A. Correct.</p> <p>18 Q. And the first one, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And, under Objective 2 you --</p> <p>21 we -- I see here: Pass all GMP</p> <p>22 inspections.</p> <p>23 Do you see that?</p> <p>24 A. Again, Objective 2 covers</p>

<p style="text-align: right;">Page 45</p> <p>1 quality and compliance.</p> <p>2 Q. Yes.</p> <p>3 A. Covers GMP inspections, no</p> <p>4 regulatory actions, yes, amongst other</p> <p>5 activities around quality and compliance,</p> <p>6 which was an important metric at the</p> <p>7 company.</p> <p>8 Q. Okay. And, what is a GMP</p> <p>9 inspection? What's GMP stand for?</p> <p>10 A. That's an acronym for good</p> <p>11 manufacturing practice.</p> <p>12 Q. And, under Objective 2 there's</p> <p>13 also: New products/product supply.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And it states: 67 million in</p> <p>17 new product revenues on 16 plus launches.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Was that a target that you</p> <p>21 have -- that you attain 67 million in new</p> <p>22 product revenues for that year?</p> <p>23 A. I'd have to look at the</p> <p>24 documents later 'cause this is the</p>	<p style="text-align: right;">Page 46</p> <p>1 beginning of the year. So, certainly,</p> <p>2 during the course of the year, we would,</p> <p>3 when I did the year-end review, we would</p> <p>4 have a number against that. That's the</p> <p>5 number when I mentioned before about</p> <p>6 setting objectives.</p> <p>7 In the generic space, new</p> <p>8 products, it's always a challenging way to</p> <p>9 plan because you don't have a fixed date.</p> <p>10 You've submitted application to the FDA.</p> <p>11 FDA would review it. FDA doesn't commit</p> <p>12 to a specific target date. Back in this</p> <p>13 time frame, there were not user fees. So</p> <p>14 what's in the space right now is GDUFA,</p> <p>15 which is Generic User Fee Act -- Generic</p> <p>16 Drug User Fee Act. Just like in the brand</p> <p>17 side PDUFA. That's in place now which</p> <p>18 provides a little bit more visibility</p> <p>19 towards -- towards targeting, but back in</p> <p>20 this time frame, there was not that in</p> <p>21 place. So you would submit an application</p> <p>22 to the agency, and it could take 12</p> <p>23 months, it could take 18 months, it could</p> <p>24 take three years, four years.</p>
<p style="text-align: right;">Page 47</p> <p>1 Many of our applications also</p> <p>2 were Paragraph IVs, so that involved legal</p> <p>3 challenges with the Hatch-Waxman activity.</p> <p>4 So, one of the challenges every</p> <p>5 year in setting targets was to agree to, I</p> <p>6 mentioned the negotiation, agree to what</p> <p>7 would be the target for new product</p> <p>8 revenues which is a subset of the overall</p> <p>9 business revenue.</p> <p>10 So, that 67 is a subset in this</p> <p>11 instance of the 551 which was the top line</p> <p>12 revenue target for the business.</p> <p>13 Q. And, the next line references:</p> <p>14 90 percent product availability.</p> <p>15 What does that refer to?</p> <p>16 A. So, product availability was a</p> <p>17 metric we used within the company about</p> <p>18 basically having supply chain to support</p> <p>19 customer. So, again, product availability</p> <p>20 here is essentially when a customer places</p> <p>21 an order, we have that product in stock</p> <p>22 and we can ship within -- within their</p> <p>23 time frame, which is usually two or three</p> <p>24 days. So it's available to customers.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And, who set these targets? Did</p> <p>2 you set these targets with Siggi, or did</p> <p>3 he set them for you? Or, how did that</p> <p>4 work?</p> <p>5 MR. DIAMANTATOS: Objection to</p> <p>6 form.</p> <p>7 A. Again, it was the negotiation.</p> <p>8 So, the way we would do budgeting is,</p> <p>9 again, my team, my organization, my sales</p> <p>10 organization, my marketing team, my</p> <p>11 finance group would all build up based on</p> <p>12 looking at the market data, if it was IMS</p> <p>13 or Wolters Kluwer, look at our position in</p> <p>14 terms of market share, look at possible</p> <p>15 new product launches, look at competitive</p> <p>16 offerings and do a bottoms-up revenue</p> <p>17 case.</p> <p>18 Also, our plants would look at,</p> <p>19 you know, cost of goods and acquiring raw</p> <p>20 materials and access to DEA quota, for</p> <p>21 example. That was an item there. And we</p> <p>22 would basically build a bottoms-up</p> <p>23 financial plan. Then we'd present it to</p> <p>24 Siggi and the management team or Robert</p>

<p style="text-align: right;">Page 49</p> <p>1 Wessman. And there was always negotiation</p> <p>2 because invariably whatever number we</p> <p>3 would build up from the bottom was usually</p> <p>4 lower than what was sort of expected from</p> <p>5 the top down. So then we would sort of</p> <p>6 negotiate and try to find opportunities,</p> <p>7 and sometimes we took on challenges where</p> <p>8 it was just like you got to go for this</p> <p>9 number. It was sort of a -- anybody who's</p> <p>10 been in the commercial sense, this is an</p> <p>11 annual process that everybody goes</p> <p>12 through.</p> <p>13 Q. And, so, I see on the next page</p> <p>14 there's nothing filled out there.</p> <p>15 Is that -- was that typical?</p> <p>16 A. What do you mean?</p> <p>17 MR. DIAMANTATOS: Objection.</p> <p>18 MS. WELCH: Object to the form.</p> <p>19 BY MS. BAIG:</p> <p>20 Q. Well, on the next page it says</p> <p>21 "Behavioral Indicators" and performance</p> <p>22 and that's just blank, and so the</p> <p>23 following page "Overall Performance</p> <p>24 Evaluation."</p>	<p style="text-align: right;">Page 50</p> <p>1 A. Which specific page are you</p> <p>2 asking?</p> <p>3 Q. The one that ends in '046. It's</p> <p>4 the fourth page of the document.</p> <p>5 It looks like it's a form, but</p> <p>6 it hasn't been filled out.</p> <p>7 A. Well, again, I mean, so, there's</p> <p>8 no date on this document. Or, is there?</p> <p>9 It just says "Period Covered."</p> <p>10 This may have been at the beginning of the</p> <p>11 year. So, again, if you look at the form,</p> <p>12 ambition, teamwork, customer care,</p> <p>13 proactivity, flexibility. It actually</p> <p>14 has -- has things that are the</p> <p>15 expectations and then the spaces that are</p> <p>16 blank are either midyear comments or</p> <p>17 end-of-year comments.</p> <p>18 So, again, if I look at other</p> <p>19 documents down the road here, that's</p> <p>20 blank.</p> <p>21 2009, okay.</p> <p>22 Q. So, if you look at the first</p> <p>23 document it says on the first page of the</p> <p>24 whole exhibit "Period covered by appraisal</p>
<p style="text-align: right;">Page 51</p> <p>1 2008." And then you have --</p> <p>2 A. Right. But, so, again --</p> <p>3 Q. Hang on. You have the fourth</p> <p>4 page which doesn't really have anything</p> <p>5 filled in and the fifth page which doesn't</p> <p>6 appear to have anything really filled in.</p> <p>7 Although it is checked "Exceeds</p> <p>8 expectations."</p> <p>9 So, no, there are some comments</p> <p>10 here on the fifth page.</p> <p>11 Do you see that?</p> <p>12 MS. WELCH: Objection to form.</p> <p>13 A. Can you go back?</p> <p>14 Q. Sure. On the fifth page of the</p> <p>15 document Bates stamp number the last few</p> <p>16 digits are '047.</p> <p>17 A. Okay. Yeah.</p> <p>18 Q. "Overall performance evaluations</p> <p>19 and comments."</p> <p>20 A. Yes.</p> <p>21 Q. And you see there's comment in</p> <p>22 that box?</p> <p>23 A. Which box?</p> <p>24 Q. In the big box with five smaller</p>	<p style="text-align: right;">Page 52</p> <p>1 boxes in it. Starting with "Fails to meet</p> <p>2 expectations" and moving downwards towards</p> <p>3 "Exceptional."</p> <p>4 Do you see that box?</p> <p>5 A. I mean, those aren't comments.</p> <p>6 Those were the guidelines that we -- when</p> <p>7 we used this system for employees in terms</p> <p>8 of rating performance.</p> <p>9 So, like, yeah, as expected,</p> <p>10 achieves goals as required or meets</p> <p>11 critical goals, this was the template that</p> <p>12 we used for performance management.</p> <p>13 Q. Okay. And you see it's marked</p> <p>14 "Exceeds expectations" with two Xs there?</p> <p>15 A. There are two Xs there, yes.</p> <p>16 Q. And, is this -- was this</p> <p>17 something that you would have marked, or</p> <p>18 that Siggi would have marked for you?</p> <p>19 A. Well, again, it's my performance</p> <p>20 review. So someone would have marked it</p> <p>21 for me. I had a chance under "Employee</p> <p>22 comments" to add my comments there, as</p> <p>23 well as in these other forms the midyear</p> <p>24 comments and the end-of-year comments</p>

1 would both be potentially my comments, as
2 well as Siggi's comments to the extent of
3 which he did that.

4 Like I say, this document, to
5 me, doesn't appear to be the final version
6 for 20 -- for 2008.

7 Q. Okay. But this, to the extent
8 it was marked, would likely have been
9 marked by Siggi.

10 Is that right?

11 MS. WELCH: Objection to form.

12 BY MS. BAIG:

13 Q. "Exceeds expectations"?

14 A. It's possible. Or, again, maybe
15 I have -- I put that as my self-assessment
16 and he would come and have a chance to --
17 to make his own assessment.

18 There's no signatures there.

19 There's no names.

20 Q. Right.

21 A. The document's not even signed.

22 Q. I noticed that.

23 A. So I would say it's probably not
24 a final version.

1 Q. Okay. So then we have another
2 version, which follows it, which also says
3 "Period covered by appraisal 2008."

4 MR. DIAMANTATOS: Objection to
5 form.

6 BY MS. BAIG:

7 Q. Do you see that?

8 A. Yes.

9 Q. Okay. But there's not a lot in
10 this document either. I see under
11 "Midyear comments" and "End of year
12 comments" on page 2 those are all blank.

13 Do you see that?

14 MR. DIAMANTATOS: Objection to
15 form.

16 A. I think it's the same thing.

17 Q. And then if you keep turning.

18 A. Yeah.

19 Q. If you turn to the document that
20 starts, or that's '4027 at the bottom, do
21 you see that?

22 A. Mm-hm.

23 Q. And that says "Period covered by
24 appraisal 2009."

1 A. Correct.

2 Q. All right. And then you have
3 for Objective 1 you have: U.S. budget
4 \$551 million in revenues.

5 Do you see that?

6 A. Yeah. So, again, if I look at
7 the documents, the first three or four
8 that you have that are kind of blank or
9 whatever, I think what's misleading or
10 might be inaccurate is that period covered
11 by appraisal saying 2008, 'cause then if
12 you look at this one, which issued
13 starting 2010 and it's period covered
14 2009, but it has the same financial
15 objectives.

16 Q. Yeah. I saw that too. I find
17 it confusing.

18 Do you know how to explain it,
19 or no?

20 I mean, these documents were
21 produced by your counsel. So I'm just
22 trying to sort through them.

23 MR. DIAMANTATOS: Objection to
24 form.

1 A. My take on this would be the
2 earlier ones were drafts, or were, you
3 know, again part of the early part of the
4 process, and somewhere along the way, you
5 know, we, me, maybe someone from HR, maybe
6 somebody else realized that we should
7 probably update that period covered to say
8 2009 'cause it clearly describes 2009
9 goals.

10 Q. Okay.

11 A. And then you see again the
12 comments in here, the end-of-year
13 comments, if I look at these, I would say
14 these were my comments that I provided as
15 part of my self-assessment.

16 And, again, the way these
17 systems worked, it was, you know, it
18 wasn't -- it wasn't an online system, but
19 there was space that, again, my
20 supervisor, 2009 that would have been
21 Siggi, had the ability to make comments.

22 Q. Okay. So, if you look at the
23 second page of this document that starts
24 Acquired_Actavis_ 00004027 and I'm looking

<p style="text-align: right;">Page 57</p> <p>1 at page '4028.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And, so, here again it says:</p> <p>5 U.S. budget 551 million in revenues. And</p> <p>6 for end-of-year comments it says:</p> <p>7 Exceeded 2009 5 plus 7 replan.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What is 5 plus 7 replan?</p> <p>11 A. So, the way, again, the way we</p> <p>12 would run the business is you make an</p> <p>13 original year budget, which again for</p> <p>14 2009, based on these documents, would say</p> <p>15 that original revenue target was 551</p> <p>16 million, the original EBITDA target was</p> <p>17 171.8, and the cash flow for 36.3.</p> <p>18 During the course of the year,</p> <p>19 basically every month we would have one</p> <p>20 month of actuals and then we'd have eleven</p> <p>21 months of a rolling forecast. Budget was</p> <p>22 always the budget, but we would, from a</p> <p>23 financial controls and management</p> <p>24 perspective, we would do actual plus --</p>	<p style="text-align: right;">Page 58</p> <p>1 plus a balance of the year forecast.</p> <p>2 So, 5 plus 7 means that there</p> <p>3 are five months of actual results and</p> <p>4 seven months of forecast for the balance</p> <p>5 of the year.</p> <p>6 And my recollection of 2009,</p> <p>7 given some of the, I'll say some of the</p> <p>8 unique challenges that we had,</p> <p>9 specifically around the Totowa facility</p> <p>10 which was not producing product at the</p> <p>11 beginning of the year, we did the base</p> <p>12 level plan, we had a certain revenue case,</p> <p>13 and then it appears from this that we did</p> <p>14 a replan in 2009.</p> <p>15 So, this is an example of where</p> <p>16 we changed the targets, which is not</p> <p>17 unheard of, but not in our normal course</p> <p>18 of business. This is in a year given</p> <p>19 these specific changes. And if you</p> <p>20 notice, the change of targets is</p> <p>21 significantly higher 'cause the -- the</p> <p>22 target was no longer 551 million. It was</p> <p>23 626 million 'cause if we -- the business</p> <p>24 performed 5 -- 656 versus 626, EBITDA of</p>
<p style="text-align: right;">Page 59</p> <p>1 275 versus 241. And one of the big</p> <p>2 differences is when we did the first plan</p> <p>3 in 2008, we didn't have Kadian in the</p> <p>4 plan, and then of course we acquired that</p> <p>5 asset at the end of 2008. So the replan</p> <p>6 would have captured the Kadian asset.</p> <p>7 Q. Okay. So it notes here that the</p> <p>8 combined U.S. revenues which were greater</p> <p>9 than 656 million, there's reference that</p> <p>10 says: Recovery was led by successful in</p> <p>11 the of Kadian, launch of Oxy CR and</p> <p>12 outstanding pricing contract work by GRX</p> <p>13 sales and marketing team.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And a little further down</p> <p>17 under "End of Year Comments" it says:</p> <p>18 Mostly attained. Critical items exceeded.</p> <p>19 Correct?</p> <p>20 A. That's for Objective 2.</p> <p>21 Q. For Objective 2, yes.</p> <p>22 A. Yes.</p> <p>23 Q. And it goes on to state: LF</p> <p>24 site wave 1 completed in April (Oxy IR</p>	<p style="text-align: right;">Page 60</p> <p>1 review release.)</p> <p>2 Right?</p> <p>3 A. Yes.</p> <p>4 Q. And a little further down it</p> <p>5 says: New product results exceeded but</p> <p>6 based primarily on Oxy CR launch late</p> <p>7 November. 58 million for CR.</p> <p>8 What does 58 million for CR</p> <p>9 refer to?</p> <p>10 A. So, again, at the end of 2009,</p> <p>11 we had a, I mentioned before in our</p> <p>12 pipeline we would have Paragraph IV items.</p> <p>13 So one of the items that was in our</p> <p>14 pipeline was a Paragraph IV challenge to</p> <p>15 OxyContin, which is Oxy CR. That was,</p> <p>16 again, the brand product was a Purdue</p> <p>17 item. Actavis had that in its portfolio.</p> <p>18 And we settled our Paragraph IV</p> <p>19 litigation, and part of that settlement</p> <p>20 was Purdue provided us a limited inventory</p> <p>21 of private label generic OxyContin, which</p> <p>22 we sold a portion of at the end of 2009</p> <p>23 and a portion at the beginning of 2010.</p> <p>24 Q. And if you turn the page,</p>

<p style="text-align: right;">Page 61</p> <p>1 there's a reference to a settlement 2 agreement with Purdue. 3 Is that -- is that what you're 4 talking about, or is that something 5 different? 6 MS. WELCH: Objection to form. 7 A. Yes. 8 And, as you're probably aware, 9 those settlements, when they are done, 10 they're submitted to the FTC. 11 Q. And, what was the gist of that 12 litigation with Purdue? 13 MS. WELCH: Objection to form. 14 A. Well, again, I'm professed to 15 not be an expert, but the essentially the 16 way generic drugs work is you have a brand 17 company, has IP. Potentially it could be 18 formulation, it could be development, it 19 could be method of use, it could be 20 delivery mechanism, and what generic 21 companies do is that they -- in order to 22 get a generic filed, you basically have to 23 demonstrate the same active ingredient, 24 the same route of administration to be</p>	<p style="text-align: right;">Page 62</p> <p>1 bioequivalent in the same dosage form. So 2 generic companies will formulate. Some 3 will formulate doing what we call 4 copycats. That's not the business model 5 for Actavis or most of the significant 6 generic players. What we would do is try 7 to formulate around the IP or identify 8 what part of the IP we believe was invalid 9 or prior art. 10 And so, again, on this specific 11 molecule, there could have been multiple 12 patents in play. I believe that there 13 were. There were multiple Paragraph IV 14 filers on this. There was a significant 15 change in the raw material. Those who 16 know this molecule know that that's been a 17 contested item for quite some time. But 18 essentially, what we did is we opted to 19 settle our litigation. Litigation's 20 expensive, uncertain. So for certainty, 21 we agreed to settle litigation. 22 And, as it says here in this 23 thing, it said: Three paths for market 24 commercialization. One was essentially we</p>
<p style="text-align: right;">Page 63</p> <p>1 had a license to their IP, that -- those 2 that we believe were valid or part of our 3 settlement. If we were to get our own 4 approval, we could then launch under a 5 license. 6 We opted to take the other path, 7 which is rather than to wait that out, 8 given the uncertainty of our application 9 and the legal situation, we opted to take 10 the raw materials or the finished goods 11 that Purdue was providing, which was part 12 of that settlement agreement, and we sold 13 that in the market both in late 2009 and 14 early 2010. 15 Q. And if you turn to the last page 16 of the document, is that Siggi Olafsson's 17 signature? 18 A. Which page? 19 Q. The very last page of the 20 exhibit. 21 A. I mean, yeah. It looks like -- 22 I don't know if it's a true signature or 23 an electronic signature, but yes. 24 MS. BAIG: Let's have this</p>	<p style="text-align: right;">Page 64</p> <p>1 document marked as Exhibit 2, please. 2 (Boothe Exhibit 2, email chain 3 ending January 26, 2010, Bates No. 4 ALLERGAN_MDL_03317313 to 03317326, was 5 marked for identification, as of this 6 date.) 7 BY MS. BAIG: 8 Q. This is a document that starts 9 as an email from Hafrun Fridriksdottir to 10 Brenda Vesey, and it's Bates stamped 11 ALLERGAN_MDL_03317313 through 03317326. 12 Who is Hafrun Fridriksdottir? 13 A. Sure. So, Hafrun was my head of 14 R&D, research and development. 15 Q. So he reported to you while you 16 were at Actavis? 17 A. She. 18 Q. She? 19 A. She. 20 Q. Okay. She reported to you at 21 Actavis? 22 A. Yes. She -- she was with 23 Actavis, she had been with Actavis before 24 they acquired Alparma. Based in Iceland.</p>

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1 She's Icelandic. And she had
 2 responsibility for global R&D. And at
 3 some point, I believe it was in 2008, I
 4 was able to convince Siggi to have Hafrun
 5 come to the U.S. and take over leadership
 6 for the U.S.-based research and
 7 development activities.
 8 Q. Okay. And Brenda Vesey?
 9 A. Brenda was my head of human
 10 resources, HR.
 11 Q. And USET goals refers to US
 12 executive team goals.
 13 Is that right?
 14 A. Correct.
 15 Q. Okay. And, are these -- the US
 16 executive team goals, are these part of
 17 the targets that you described earlier?
 18 A. Well, again, this document is
 19 2010. So the document you were showing me
 20 was goals for 2008.
 21 Q. Yes, but you spoke generally
 22 about working with your team to create
 23 targets generally.
 24 Is this something different?

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1 team member contributed to this draft
 2 sheet. You know, we may or may not have
 3 done this as an off-site. We may or may
 4 not have done this in a conference room.
 5 It's a draft. And one thing looking at
 6 it, since it's about six or eight pages,
 7 clearly we had to filter this down into a
 8 finite set of top level objectives and of
 9 course then would be cascaded to the
 10 functional areas with functional-specific
 11 objectives, which your question before
 12 about how was compensation done, there
 13 would be a salary, business results
 14 portion of the bonus, and then either
 15 departmental or individual. So even that
 16 30 percent target could be half based on
 17 business results and half based on
 18 individual targets subject to the company
 19 achieving a minimum threshold of -- of
 20 results. And that's my recollection how
 21 the program was set up.
 22 Q. And, who was on the U.S.
 23 executive team?
 24 MS. WELCH: Objection to form.

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1 Can you talk to me a little bit about US
 2 executive team goals and what those are?
 3 MS. WELCH: Objection to form.
 4 MR. DIAMANTATOS: Objection to
 5 form; mischaracterizes the witness's
 6 testimony.
 7 A. Sure. And if you look at the
 8 other documents, they all say drafts. So
 9 certainly from a management process, and
 10 this is draft and it says December of
 11 2009. So, as we were finishing the
 12 calendar year and going into our -- our
 13 budgeting, we may have already actually
 14 had the targets from corporate, 'cause
 15 that usually happened in November, and
 16 this was, I would say, a little bit of an
 17 alignment and a cascading activity 'cause,
 18 again, there would be business targets and
 19 there would be departmental targets and
 20 there would be individual targets.
 21 So, again, looking at this
 22 document, which again I'll happily give
 23 the details of it, it looks, if you
 24 notice, you know, every U.S. executive

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1 A. Again, if you look at the --
 2 from Brenda, who the "to" is, that was my
 3 U.S. executive team at the time of January
 4 26, 2010. We subsequently added Michael
 5 Clark at some point, I think that was in
 6 2011 or 2012, as chief compliance officer.
 7 Q. I see.
 8 So, these people, Bill
 9 Ostrowski, Brenda Vesey, Chris Young,
 10 Hafrun Fridriksdottir, John LaRocca, Lisa
 11 Graver, Michael Profetto, Nasrat Hakim,
 12 Stephen Gallagher, Terrence Fullem and
 13 Terri Nataline, these are the U.S.
 14 executive team members?
 15 A. Yes.
 16 MS. WELCH: Objection to form.
 17 A. They all reported to me
 18 directly.
 19 Q. What's a Town Hall meeting?
 20 A. So, Town Hall meetings is,
 21 essentially, again, where we would bring
 22 in the associates from the location or
 23 facility and we would do a Town Hall
 24 meeting where, you know, myself or other

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1 leaders or, by the way, sometimes we did
2 multiple things. It was a means to
3 communicate, means to share results, to
4 provide direction on priorities for the
5 future. We did a lot of recognition and
6 reward activity. I would do Town Hall
7 meetings in the normal course of business
8 at all the Actavis facilities.

9 Q. So, when you say associates, is
10 it an all-hands meeting, all employees,
11 or --

12 A. That was the intent, yeah. We
13 would invite all employees. But we had
14 multiple facilities, so we had to do
15 multiple Town Halls. We wouldn't bring
16 people from Florida up to New Jersey for a
17 Town Hall meeting. We would go to
18 Florida. We would go to North Carolina.

19 Q. Is it your understanding that
20 this is a draft document and there would
21 be a final document that's executed?

22 MS. WELCH: Objection to form.

23 A. Well, again, I just read the
24 text that Brenda sent out to the

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1 leadership team saying please find a file
2 that captures the goals discussion. So,
3 since there was a discussion, it wasn't
4 finalized.

5 And the thing at the top is
6 Hafrun said: Made. And M-A-I-D, by the
7 way, so it's spelled wrong. Made some
8 minor changes.

9 Q. And, would you have been the one
10 that filled this out?

11 MS. WELCH: Objection to form.

12 A. Filled what out?

13 Q. That inserted the comments in
14 the -- in the middle section. So, for
15 example, on page -- the page that ends
16 '317, it says: Support level -- support
17 service level of 95 percent.

18 Are you the one that completed
19 this?

20 MS. WELCH: Same objection.

21 A. Again, on this page, if you look
22 at the owner, you see MP, that would be
23 Mike Profetto, market and customer
24 service, customer service support, service

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1 level 95.

2 So, service level, a 95 was a
3 consistent metric for the business, but
4 again, it's not just the manufacturing
5 team that's involved in delivering a
6 service level of 95 percent. It starts
7 with the marketing forecast, which would
8 have been Mike's organization, and the raw
9 material procurement, which would be a
10 supply chain, the facilities would be
11 supply chain, the quality organization
12 that makes certain the product is
13 manufactured to specification. If there
14 was any sort of deviation, we would assess
15 it, determine whether or not that product
16 was releasable. And of course we had a
17 distribution group that would be
18 responsible to make certain. We had a
19 customer service group that would take
20 orders in and process them. And we
21 release -- and we use a third party called
22 UPS, actually, to do our distribution at
23 the time.

24 So, all -- basically something

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1 that I managed the group by is basically
2 all functions are responsible for
3 delivering the key metrics. Service level
4 is one of the key metrics.

5 Q. And, so, Siggi would be
6 responsible for inserting the financial
7 metrics.

8 Is that right?

9 A. On this document?

10 Q. Mm-hm.

11 A. No.

12 Q. I'm just looking on the page
13 with the ending in the Bates stamp '315
14 and where it says "Finance and Financial."
15 It says "SG."

16 A. Which page?

17 Q. The page that ends in '315.

18 A. Okay.

19 Q. Do you see where it says
20 "Finance and Financial" and next to it it
21 says the owner is SG.

22 A. Mm-hm.

23 Q. Is that Siggi?

24 A. No.

1 Q. Who's SG?
 2 A. Steve Gallagher.
 3 Q. Siggi would be SO.
 4 All right. Who's Steve
 5 Gallagher?
 6 A. So, again, Steve Gallagher was
 7 my chief financial officer, so a member of
 8 the executive -- again, this is not a
 9 Siggi document. This was within the U.S.
 10 organization. This was our process to,
 11 like I say, cascade.
 12 So, on this chart, it says:
 13 Meet or exceed the 2010 budget. So that
 14 615 and 235 on that chart would have been,
 15 again, the metric of the target that had
 16 been presented to or negotiated to or
 17 agreed upon or told to the U.S. team. And
 18 I mentioned that would have been done as
 19 sort of in the November time. This is a
 20 document in already late into January. So
 21 we were already executing as a business
 22 against those financial metrics, but those
 23 were not the sole performance metrics for
 24 the company or for my team or for our

1 organization.
 2 Q. And, what does COGNOS refer to?
 3 C-O-G-N-O-S.
 4 A. Can you show me where that is,
 5 please?
 6 Q. On the page that ends '318 in
 7 the middle.
 8 A. 110 percent of COGNOS, is that
 9 what you mean?
 10 Q. Mm-hm.
 11 A. COGNOS number?
 12 Q. Yeah.
 13 Do you know what COGNOS means?
 14 A. COGNOS, I believe, it's an
 15 acronym for some sort of an IT system,
 16 which I believe was like a business
 17 intelligence or some sort of forecasting
 18 tool.
 19 Since they have brackets around
 20 them, I'm sure they were placeholders.
 21 Q. Okay.
 22 MS. BAIG: All right. Let's
 23 have this document marked as
 24 Exhibit 3, please.

1 (Boothe Exhibit 3, email chain
 2 ending January 27, 2010, Bates No.
 3 ALLERGAN_MDL_03305226 to 03305230, was
 4 marked for identification, as of this
 5 date.)
 6 BY MS. BAIG:
 7 Q. And, this is a document Bates
 8 stamped ALLERGAN_MDL_03305226 through
 9 '5230. It starts as an email string from
 10 you to Brenda Vesey, with the subject line
 11 "2010 goals."
 12 Do you see that?
 13 A. Yes.
 14 Q. Okay. And, do you recall having
 15 a discussion with -- with Brenda Vesey in
 16 or about 2010 about -- about 2010 goals?
 17 A. Can I re -- review the entire
 18 email chain here, please?
 19 Q. Sure.
 20 A. (Perusing document.)
 21 Okay. I got a general sense of
 22 it. Yeah.
 23 Q. All right. So, do you -- do you
 24 have a general -- general recollection of

1 this discussion that you had with her
 2 about -- about goals?
 3 MR. DIAMANTATOS: Objection to
 4 form.
 5 A. This is actually less about
 6 goals.
 7 This is more a conversation
 8 about the 2009 bonus payout for U.S.
 9 associates.
 10 Q. Okay. And, do you see in the --
 11 on the first page of the document there's
 12 a reference to US STIP.
 13 What does that refer to?
 14 A. Sure. STIP is an acronym for
 15 short-term incentive plan. So basically
 16 it's the bonus that we talked about
 17 earlier.
 18 Q. And, what was trying to be
 19 decided here?
 20 MS. WELCH: Objection to form.
 21 A. Again, based on reading through
 22 the documents here, again, Actavis was a
 23 global company, had multiple parts it. I
 24 ran the U.S. portion, which is about a

1 third of the company's revenue at the
2 time. And if you read through the
3 materials here, it's basically -- and if
4 you go back to -- I mentioned that we did
5 a replan. So that replan was actually the
6 2 plus 10, if you read the notes there.
7 And the U.S. -- and that was across the
8 entire company. So, the U.S. business
9 exceeded its replan target of the 2 plus
10 10, but the other parts of the company did
11 not.

12 So, part of this is around,
13 again, negotiating that since the payout
14 if the U.S. is also subject to global
15 performance, the performance in the U.S.
16 was strong, but the rest was weak, we
17 wanted to make certain that the U.S.
18 organization was -- was appropriately
19 recognized and rewarded, even though some
20 parts of the company did not achieve that.
21 And that's -- that's essentially the basis
22 for the bulk of it.

23 Q. And, were the successes of the
24 U.S. company that year based largely on

1 Oxy CR, Kadian and Oxy IR?

2 MS. WELCH: Objection to form.

3 MR. DIAMANTATOS: Objection.

4 A. Again, if I go back to that
5 prior document, those were contributors,
6 but there were other things. You see, for
7 example, Acetazol was another product that
8 had a very, very strong performance. We
9 did a better job in managing the facility.
10 We did a better job with costs. We got
11 Totowa facility back and running.

12 And, again, the Oxy CR product
13 was not in the budget. So yes, that was
14 certainly a -- at least I don't believe it
15 was in the budget. That was a found
16 contributor to -- to the business
17 performance that year, the generic Oxy CR.

18 Q. That was a profound contributor,
19 is that what you said?

20 MR. DIAMANTATOS: Objection;
21 mischaracterizes the witness's
22 testimony.

23 A. I didn't say "profound." I
24 said --

1 Q. Well, the record says "that was
2 a found contributor."

3 What did you say?

4 A. Found?

5 Q. That's what the record says.
6 I'm asking you what you said.

7 What kind of contributor?

8 A. Again, if it wasn't in the
9 budget and we actually delivered revenue,
10 that would be found, I guess is how you
11 would interpret that statement.

12 Q. I see. Okay.

13 A. It was a contributor.

14 Q. And you see the reference here
15 on the middle of the third page: We did
16 have many, many successes last year, but
17 we also made our financial results based
18 largely on the following factors: Oxy CR,
19 Kadian, Oxy IR return and Acetazol pricing
20 and fortunate problems of competitors.

21 A. What page is that?

22 Q. The third page of the document
23 halfway down.

24 A. Yes.

1 Q. And a little further up it
2 states: Regarding U.S. performance, my
3 sense is that we came in between 105 and
4 110 percent on both revenue and EBITDA.

5 Do you see that?

6 A. Yes.

7 So, essentially, this document
8 says that based on purely performing on
9 the financials, we could have requested or
10 expected 105 or 110 percent, so higher
11 than budget payout, but in light of the
12 fact that the other parts of the company
13 did not perform, we were going to propose
14 105 percent on the low end in recognition
15 of the challenges across the rest of the
16 company. And likewise in other years,
17 there's been times where we underperformed
18 and we affected the global results of the
19 other parts of the country of the company,
20 which had actually been in 2008, where if
21 you see in the notes it says there was
22 actually no bonus paid to the U.S. team in
23 2008.

24 So, you set the targets. You

1 perform and then it gets, you know, like I
2 said, there's always some sort of a
3 negotiation sometimes.

4 Q. And then if you look at the
5 first page, there's a reference to a
6 commitment that Siggi made to you.

7 A. Where is that?

8 Q. Last paragraph: Since Siggi's
9 commitment to you is not widely known,
10 people are expecting that the individual
11 component will need to be 100 percent in
12 order for payout to occur on the
13 individual component (U.S. component still
14 pays out.)

15 What was Siggi's commitment to
16 you that was not widely known?

17 A. Again, I think I referenced it
18 that globally the entire company had to
19 achieve a certain level of performance,
20 which we apparently did not globally, but
21 since the United States overachieved to
22 105 or 110 percent, the discussion was to
23 make certain not to punish the U.S.
24 organization, or to recognize the

1 significant turnaround that occurred
2 between 2008 and 2009 and pay out a bonus,
3 but less than, essentially, like I said,
4 that the company, or that the division,
5 the group could have said based on our
6 actual results, we should get a higher
7 number.

8 So, I clearly had a conversation
9 with Siggi and others to -- in light of
10 the complexity and the situation, to -- to
11 have a bonus paid at that level rather
12 than a lower number in light of the global
13 performance.

14 Q. And that would be for you and
15 for your team, correct?

16 A. That would be for all U.S.
17 associates who ran a bonus program.

18 Q. Okay. And in the paragraph
19 preceding that, middle of the way through
20 there's a sentence that says: There is a
21 step in the approval process after the
22 U.S. Compensation Committee reviews the
23 rolled up results to present those to
24 Siggi for a one-over-one approval.

1 Do you see that?

2 A. Yes.

3 Q. That approval process, what is
4 that approval process?

5 A. So, again, I mean, we were a
6 division of a global company. So we had a
7 compensation committee within the U.S.
8 that I chaired. Brenda was -- or,
9 actually, I think Brenda chaired. Steve
10 and myself and John were on it. And so we
11 would review all the financial results.
12 We would review the individual
13 performance. We would set a
14 recommendation for what we believed the
15 business was in -- had earned as a bonus
16 for that year, but we had not the
17 authority to actually grant those bonuses.
18 We had to go to the corporate parent,
19 which would have been Siggi as the CEO,
20 and then Mark is Mark Keatley, who was the
21 global CFO at the time, which is again why
22 I mentioned it was somewhat of a
23 negotiation. But we had the data, we had
24 the metrics, we had the specific

1 performance. And it wasn't, again, it
2 wasn't just revenue. It was cash flows,
3 it was EBITDA and other specific targets.

4 But overall, the corporate
5 portion of it was half and then the --
6 excuse me. May have been 40, 30 -- but
7 either way, it was corporate, there was a
8 division, and there was a personal
9 component to the -- the ESTIP.

10 Q. And the U.S. Compensation
11 Committee, that was you and your team
12 leaders.

13 Is that right?

14 A. Again, not everybody on the ET
15 was on that. I believe it was four
16 people; I think -- believe it was John,
17 Brenda, myself and Steve.

18 Q. John who?

19 A. John LaRocca, general counsel.

20 Q. Brenda Vesey?

21 A. HR.

22 Q. Steve?

23 A. Finance.

24 Q. Steve who?

1 A. Steve Gallagher.
 2 Q. And yourself?
 3 A. Yep.
 4 Q. When you left the company, did
 5 you enter into a severance agreement?
 6 A. Yeah. I mean, actually, I had a
 7 severance agreement. So, it was triggered
 8 by the change in control.
 9 Q. And, as a result of the
 10 severance agreement, were you -- were you
 11 paid a sum of money?
 12 MR. DIAMANTATOS: Objection to
 13 form.
 14 A. Yes.
 15 Q. And, how much was that, roughly?
 16 A. Do you have a document you can
 17 show me?
 18 Q. No. I'm just asking you if you
 19 have a recollection as to how much you
 20 were paid as part of your severance
 21 agreement when you left the company.
 22 A. I believe it was one year of
 23 salary and --
 24 MS. BAIG: We'll have this

1 form.
 2 A. Yes.
 3 Q. And, under "Individual
 4 Objectives" on the second page it says 1.1
 5 and then it says SIV/FTF.
 6 What does that stand for?
 7 A. The FTF stands for first to
 8 file.
 9 The SIV, again, Claudio provided
 10 me very specific targets. Claudio was the
 11 CEO at the time. So, Siggi was not with
 12 the company anymore.
 13 Q. Claudia who?
 14 A. Claudio Albrecht. He was the
 15 CEO of Actavis Group.
 16 He provided me very -- he was --
 17 Claudio was very fixed on making sure that
 18 we had our most important products with
 19 dual API raw material qualified suppliers.
 20 So I think that's what the SIV stands for,
 21 but I'm not a hundred percent certain.
 22 But the FTF stands for the first to file.
 23 So, here's an instance where the
 24 financial result is not the first metric

1 document marked as the next in order,
 2 please.
 3 (Boothe Exhibit 4, email dated
 4 January 2, 2013, with attachment,
 5 Bates No. Acquired_Actavis_00885908 to
 6 00885912, was marked for
 7 identification, as of this date.)
 8 BY MS. BAIG:
 9 Q. So, this is Exhibit 4.
 10 A. All of it?
 11 Oh, sorry.
 12 Q. This document is Bates stamped
 13 Acquired_Actavis_00885908 through
 14 '59112 -- 12. It starts as an email from
 15 you to Brenda Vesey and Gunner Agust
 16 Beinteinsson.
 17 Who's Gunner Agust Beinteinsson?
 18 A. Gunny, he was the corporate head
 19 of HR for Actavis Group or Actavis
 20 whatever they were called at that time, at
 21 the time of the transaction with Watson.
 22 Q. And, was this your final
 23 performance self-evaluation?
 24 MR. DIAMANTATOS: Objection to

1 or objective, unlike in past years.
 2 Actually, I take that back. 1.3
 3 has the second source program. That's
 4 what I was referring to. That was -- that
 5 was another objective. So, Objective 1.1
 6 was around the development group, product
 7 portfolio, the Hafrun's business, Hafrun's
 8 part of the business.
 9 Q. And there's a reference to the
 10 weight being 30 percent there?
 11 A. Yes.
 12 Q. And that's a reference to what?
 13 A. So, as I mentioned, so, every
 14 employee, if performance management is
 15 done well, has a salary, has a bonus
 16 target, and in that bonus target will have
 17 a portion based on company results and a
 18 portion based on individual specific
 19 metrics. So, this is actually my portion
 20 of that individual specific metrics.
 21 So, Claudio, as my boss,
 22 specifically said I want to make sure
 23 we're working on first to files, that
 24 you're doing second source programs.

1 Alathur was a facility in India. The
 2 Moxduo product at the time.
 3 Those were -- and so, with this,
 4 he and I had discussed, negotiated --
 5 Claudio was less of a negotiator. He was
 6 Austrian, so he pretty much told you what
 7 it was going to be. Some negotiation.
 8 And then, yes, then I would use this,
 9 since they affected my personal
 10 performance, I made certain that my team
 11 was aware of what I was being measured on.
 12 So, of course, then cascade in a line so
 13 everybody could contribute to the business
 14 results, as well as attainment of my
 15 personal objectives.
 16 Q. And then under "Status" it says:
 17 Not started.
 18 Is that right?
 19 A. Which one?
 20 Q. Right next to the 30 percent
 21 figure.
 22 A. I think they all say "not
 23 started." That may have something to do
 24 with whatever the system or whatever this

1 Q. And that was something that was
 2 initiated, but not followed through on.
 3 Is that right?
 4 MS. WELCH: Objection to form.
 5 A. Well, again, Moxduo was a
 6 product that we had licensed in as for our
 7 specialty side of the business. We had
 8 partnership with a company called QRX
 9 Pharma and we actually -- QRX Pharma had a
 10 PDUFA date. I mentioned before what a
 11 PDUFA date stood for was a fixed date when
 12 the agency was going to determine if the
 13 NDA, the new drug application, would be
 14 approved. That PDUFA date was in June or
 15 July of 2012. What happened was actually
 16 the agency did review the application. It
 17 was not approved.
 18 So, in here, the -- the metric
 19 was actually basically get it approved and
 20 be launched, and since it didn't happen
 21 and if you look target base, that was a
 22 hundred. The actual achievement was zero.
 23 So we did not achieve. And if you look at
 24 my comments: On track prior to PDUFA.

1 printout is, 'cause this is at the end of
 2 the year. And, if you look at comments, I
 3 put comments in it.
 4 So, I would say that's probably
 5 more of a -- or it could have been, again,
 6 I think this thing is -- since this was an
 7 online system, if you didn't actually go
 8 in and use it, it would show as not
 9 started.
 10 Q. I see.
 11 A. For the evaluator.
 12 Q. So that's inaccurate? The "not
 13 started" part is inaccurate, to your
 14 understanding, right?
 15 MS. WELCH: Objection to form.
 16 A. Yes.
 17 And this was done in -- this was
 18 done in 2013. Yeah, so it would have been
 19 after the fact.
 20 Q. Okay. And on the next page --
 21 or, under 1.2 you have a reference, or
 22 there is a reference to Moxduo.
 23 Do you see that?
 24 A. Yes.

1 So we had a lot of prelaunch
 2 activities in investment, but all
 3 activities on hold until the 2013 appeal.
 4 So we were still -- the company was
 5 looking at pursuing that, but in reality,
 6 it never -- it never -- it was never
 7 approved and it was abandoned once Watson
 8 took over the business.
 9 Q. Do you know why it was not
 10 approved?
 11 MR. DIAMANTATOS: Objection;
 12 foundation.
 13 A. Again, there was an advisory
 14 board panel, and they ultimately, I guess,
 15 they did not believe the clinical data
 16 supported the application's approval.
 17 Q. And, Claudio Albrecht's comments
 18 in relation to that?
 19 A. "Change waiting."
 20 Q. He states that he's changing the
 21 waiting. Is that right?
 22 And he gave you a performance
 23 rating of 90 percent because the base
 24 business/Kadian more than compensated for

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1 the Moxduo delay?
 2 Is that right?
 3 MR. DIAMANTATOS: Objection to
 4 form; foundation; calls for
 5 speculation.
 6 A. I'm not sure those are his
 7 comments or my comments 'cause it's under
 8 Douglas Boothe's comments.
 9 Q. I see.
 10 A. So I suggested a 90 percent
 11 outcome even though against the actual --
 12 the actual objective was, but it was a --
 13 Q. And, do you know whether you
 14 were given the 90 percent?
 15 A. I think all -- and, honestly, I
 16 believe all of this was somewhat
 17 perfunctory because as part of the
 18 separation agreement, I was paid at
 19 target.
 20 Q. Do you recall what your salary
 21 was when you started at Alpharma?
 22 A. No.
 23 Q. Do you recall roughly?
 24 A. Base salary 275,000-ish, 250,

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1 somewhere between 250 and 300.
 2 Q. And, do you know what that
 3 was -- well, let's start with were you
 4 entitled to a bonus at Alpharma?
 5 A. Yes.
 6 Q. And, do you know roughly how
 7 much of a bonus you received during your
 8 years at Alpharma?
 9 MS. WELCH: Objection to form.
 10 MR. DIAMANTATOS: Objection.
 11 A. Well, again, the bonus was a
 12 target percentage of your base salary
 13 subject to achieving goals. And there
 14 were, again, there were years where it was
 15 zero and there were years where it was
 16 slightly above. And you saw the 2009
 17 where it was maybe 105 percent of target.
 18 So, my bonus target was around
 19 30 percent when I started. When I was --
 20 I think when I made C -- when I was COO it
 21 was maybe 40, and I believe I negotiated
 22 with Claudio a 50 percent bonus target for
 23 the short-term incentive plan.
 24 Q. So, do you recall whether or not

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1 you received a bonus of 30 to 40 percent
 2 for each of the years that you worked at
 3 Alpharma?
 4 MR. DIAMANTATOS: Objection to
 5 form.
 6 A. Again, Alpharma was two years.
 7 So 2004, 2005. I don't specifically
 8 recall the 2004. 2005 was during the
 9 transaction, so I believe the company
 10 paid, again, at -- at target, so 30
 11 percent.
 12 But I don't have the data. So
 13 if you want to show me the data, I can
 14 confirm or provide an explanation.
 15 Q. And that was for short-term
 16 incentive plan.
 17 Was there also a long-term
 18 incentive plan at Alpharma?
 19 A. Yes.
 20 MR. DIAMANTATOS: Objection to
 21 form.
 22 BY MS. BAIG:
 23 Q. And, what was the long-term
 24 incentive plan at Alpharma?

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1 A. Alpharma's plan, as most
 2 corporations will have, a combination of
 3 stock options and/or restricted stock.
 4 Alpharma was a publicly-traded company.
 5 Q. And, so, do you recall how much
 6 you earned while at Alpharma through the
 7 long-term incentive plan?
 8 MS. WELCH: Objection to form.
 9 A. No.
 10 Q. Do you recall roughly?
 11 A. Again, the -- as part of the
 12 transaction, any sort of shares would have
 13 been vested, but I don't recall what the
 14 Alpharma shares were. There was some --
 15 maybe a hundred thousand dollars over the
 16 two-year period.
 17 Q. And, when you moved to Actavis,
 18 do you recall what your starting salary
 19 was?
 20 A. Well, again, when Actavis
 21 acquired Alpharma, basically my starting
 22 salary was my Alpharma salary. So it --
 23 that's, again, around 275, 280, 300-ish.
 24 Q. And, did that change during your

1 time at Actavis?
 2 A. Yes.
 3 Q. And, what did it change to?
 4 MS. WELCH: Objection to form.
 5 A. I believe I -- when -- when I
 6 was made chief commercial or chief
 7 operating officer, it bumped up to a
 8 higher number, might have been 350. When
 9 I was CEO of Actavis from 2008, maybe
 10 started at 400, and I believe by the time
 11 I left in 2012 it was around 450 base.
 12 Q. And, do you recall what the
 13 bonus structure was?
 14 MR. DIAMANTATOS: Objection to
 15 form.
 16 BY MS. BAIG:
 17 Q. Or how much you earned as a
 18 bonus for your years at Actavis?
 19 MR. DIAMANTATOS: Objection.
 20 MS. WELCH: Objection to form.
 21 A. Again, I mean, my target would
 22 be -- was either 40 or 50 percent and
 23 subject to the business performance.
 24 I know in 2008 the bonus was

1 incentive plan at Actavis?
 2 A. We created a program for the
 3 U.S. associates, yes.
 4 Q. And, what was that?
 5 A. It was actually called -- it was
 6 a phantom stock plan. Actavis was a
 7 privately-held company. So, and again,
 8 one of the reasons we had this was both as
 9 an incentive for long-term growth and
 10 investment, but also as a retention
 11 vehicle. The company was going through
 12 all sorts of challenging situations with
 13 integration with some of the facilities.
 14 So we wanted to make certain we had a
 15 program that rewarded, incentivized people
 16 for investments in the business longer
 17 term, as well as to stay around to
 18 participate in the business growth and to
 19 address and fix and invest in future
 20 growth.
 21 Q. And, when was that long-term
 22 incentive plan created?
 23 A. 2008, I believe.
 24 Q. And, so, did you earn money as a

1 zero and in 2007, based -- or, sorry.
 2 2009, based on the documents here, it
 3 looks like it was between a hundred and
 4 105 percent of target.
 5 Q. And, do you have a recollection
 6 as to whether or not you received a bonus
 7 in 2010 and '11?
 8 A. I believe I did.
 9 Q. Do you know if it was at target?
 10 A. No, I don't recall. It was
 11 around there. Either slightly above or
 12 slightly below, but it wasn't zero and it
 13 wasn't, you know, it wasn't max'd. It was
 14 probably around the target number.
 15 Q. If it was at the target number,
 16 wouldn't it be max'd, or no?
 17 A. No. Like I -- as I explained
 18 before, if -- if the target was a hundred
 19 and the business did 105, then the bonus
 20 might pay at a 105 percent of the target.
 21 Q. Okay.
 22 A. Subject to a cap, which I
 23 believe is 120 percent.
 24 Q. And, was there a long-term

1 result of the long-term incentive plan
 2 from 2008 to 2012?
 3 MR. DIAMANTATOS: Objection to
 4 form.
 5 A. Yes.
 6 Q. And, do you recall roughly how
 7 much per year?
 8 A. Well, the way the program was
 9 set up was there were annual grants and it
 10 would take three years to vest. So, if we
 11 started in 2007 or 2008, I earned nothing
 12 until 2010 or 2011.
 13 And the way the program was set
 14 up was they were phantom shares, so they
 15 weren't real shares. We pegged it to a
 16 number like a one dollar per unit and the
 17 share value would go up or down based on
 18 company performance, and the number of
 19 grants, number of shares that would vest
 20 would be based on company performance,
 21 that performance being the EBITDA target.
 22 Q. So, do you recall how much you
 23 earned in the 2011/2012 time frame as a
 24 result of the long-term incentive plan?

1 A. No, but I'm sure you could show
2 me a document, I'd be happy to comment on
3 it.

4 Q. Do you recall whether it was
5 more than a hundred thousand dollars?

6 A. Yes.

7 Q. Was it?

8 What's the best range that you
9 can give me in terms of your best
10 recollection as to what you earned from
11 the long-term incentive plan between 2011
12 and 2012?

13 MS. WELCH: Objection to form.

14 A. Over \$500,000.

15 Q. For each year?

16 A. No.

17 Q. Total?

18 A. Yes.

19 Q. Do you know whether it was over
20 a million dollars?

21 A. It could have been. I don't
22 believe so.

23 Q. So it was some -- somewhere
24 between 500,000 and a million, is your

1 best estimate?

2 MR. DIAMANTATOS: Objection;
3 mischaracterizes the witness's
4 testimony.

5 BY MS. BAIG:

6 Q. Yes?

7 A. Yes.

8 Again, you can happily show me a
9 document, I'd be able to comment more.
10 And, again, part of it was --

11 Q. I'm just asking for your best
12 recollection.

13 A. Also, part of it was with the
14 transaction. Those shares that had been
15 granted, some portion of those vested or
16 accelerated vesting, which is pretty
17 typical in a -- in a transaction. So, it
18 may have been compressed into a shorter
19 time frame rather than paid out over time,
20 so it may have showed a higher number than
21 what would have been normally planned for
22 or expected.

23 Q. And, so, what was -- what was
24 the component of -- what was -- what was

1 the metric of the long-term incentive
2 plan?

3 MS. WELCH: Objection to form.

4 A. I believe it was EBITDA growth.

5 Q. And for you it would have been
6 EBITDA growth of the U.S. company.
7 Is that right?

8 A. For all the U.S. associates who
9 were part of the phantom stock plan.
10 There were probably 50 or so. It was
11 directors and above. It actually took
12 some specific high potentials. We would
13 also put the that in the plan. Because,
14 again, it was both a performance plan as
15 well as a retention plan, and since it was
16 over a three-year period of time, we were
17 making investments in people in 2007 and
18 2008 and those were paying out in 2010 and
19 2011, and that plan carried over at least
20 until the Watson transaction. Pretty
21 typical compensation structure.

22 MS. WELCH: If you're moving to
23 a new document, can we take a short
24 break?

1 MS. BAIG: Sure.

2 THE VIDEOGRAPHER: We're going
3 off the record.

4 The time is 10:36 a m.

5 (Recess taken.)

6 THE VIDEOGRAPHER: We're going
7 back on the record.

8 The time is approximately 10:55
9 a m.

10 BY MS. BAIG:

11 Q. Do you recall what opioids
12 Alpharma sold while you were there?

13 A. Again, so, Alpharma had a brand
14 group that sold a Kadian product, which is
15 morphine sulphate extended-release. The
16 generic part of the business, classified
17 wasn't opioid.

18 I don't -- I don't think we had
19 a significant generic pain med. We had
20 tramadol, but that's not an opioid.
21 That's an NSAID, I believe.

22 If you have a document or a
23 product catalog or some document from 2003
24 or 2004, I'd be happy to review and

1 comment.

2 Q. Do you recall what opioids
3 Actavis sold while you were there?

4 A. Again, so, during my tenure at
5 Actavis, we -- we brought -- I mean, we
6 acquired the Kadian asset. So that was
7 sold, you know, manufactured, distributed,
8 marketed sold 2009 through 2012.

9 We did sell generic versions of
10 I mentioned the -- the OxyContin
11 authorized generic product. We had that
12 brief period of time late 2009, 2010.

13 We did sell a -- we got an
14 approval on a generic version of Opana ER,
15 which would have been oxymorphone.

16 We had -- we had a filing on
17 Avinza. We never brought that to market.
18 Which was the morphine sulphate.

19 Oxycodone IR, which is
20 Roxicodone. That was the product that was
21 sold from our Little Falls facility and
22 then our Elizabeth facility.

23 We did not do Vicodin. We did
24 not do Percocet generics.

1 I think those were the primary
2 ones. There may have been others.

3 Q. Do you have any experience
4 working with a company selling drugs to
5 treat the addiction to opioids?

6 MS. WELCH: Objection to form.

7 A. Could you repeat the question,
8 please?

9 Q. Do you have any experience
10 working with a company selling drugs to
11 treat the addiction of -- to opioids?

12 MS. WELCH: Same objection.

13 A. No.

14 MS. BAIG: We'll have this
15 marked as Exhibit 5. The document is
16 Bates stamped ACTAVIS0958177 through
17 '181. It starts as an email from
18 Michael Perfetto to you, November
19 18th, 2011. And the subject line is
20 "Suboxone Walgreens offer."

21 (Boothe Exhibit 5, email chain
22 ending November 18, 2011, Bates No.
23 ACTAVIS0958177 to 0958182, was marked
24 for identification, as of this date.)

1 BY MS. BAIG:

2 Q. Do you know what Suboxone is?

3 A. I'm just looking at the document
4 first.

5 (Perusing document.)

6 Okay. Yeah.

7 Q. Do you know what Suboxone is?

8 A. Yes.

9 Q. What is it?

10 A. Well, the brand is Suboxone.
11 The generic is buprenorphine or
12 buprenorphine naloxone, and that's a
13 product that is actually used -- I
14 believe, one of its indications is for
15 treatment for substance abuse.

16 Q. Including opioid abuse, right?

17 A. Again, I don't know exactly what
18 it's -- what it's labeled indication is
19 for.

20 Q. Do you have an understanding
21 that Suboxone is used to treat opioid
22 abuse?

23 MR. DIAMANTATOS: Objection.

24 MS. WELCH: Objection to form;

1 asked and answered.

2 A. If that's what you tell me it
3 is. That's my understanding.

4 Q. No. I'm just asking if you have
5 any understanding of that independent of
6 this deposition.

7 MR. DIAMANTATOS: Same
8 objection.

9 BY MS. BAIG:

10 Q. Of what I said in this
11 deposition.

12 A. I think the Suboxone has
13 multiple indications. It's the naloxone
14 portion I thought was for abuse, for drug
15 addiction or for -- or treatment, like.

16 Q. So, do you recall that Actavis
17 was selling Suboxone?

18 A. I don't believe we got this
19 product approved. This was the product
20 that we had in the plan. It was called --
21 we had two versions. There's a -- there's
22 the plain old -- there was the standalone
23 buprenorphine and then there was the
24 buprenorphine naloxone combination, which

<p style="text-align: right;">Page 109</p> <p>1 is the Suboxone, which was in our plan for</p> <p>2 approval, but, for a whole host of</p> <p>3 reasons, I do not believe it was approved</p> <p>4 ever during my tenure at Actavis.</p> <p>5 Q. So, if you look at the second</p> <p>6 page halfway down in an email from Michael</p> <p>7 Dorsey to Ara Aprahamian and others, the</p> <p>8 subject line is "Suboxone Walgreens</p> <p>9 offer."</p> <p>10 Do you recall having a Walgreens</p> <p>11 offer for Suboxone? I mean, it would have</p> <p>12 had to be approved in order to have a</p> <p>13 Walgreens offer, correct?</p> <p>14 A. No.</p> <p>15 MR. DIAMANTATOS: Objection to</p> <p>16 form; assumes facts.</p> <p>17 BY MS. BAIG:</p> <p>18 Q. No? How come?</p> <p>19 A. Again, we -- it's in the normal</p> <p>20 course of business. We would actually</p> <p>21 solicit for business in anticipation of</p> <p>22 product approvals. So we would have a</p> <p>23 sense as to what the -- the demand would</p> <p>24 be from certain customers. So if we had,</p>	<p style="text-align: right;">Page 110</p> <p>1 you know, limited inventory, we want to</p> <p>2 make certain we had enough to support the</p> <p>3 accounts we were going after to get a</p> <p>4 sense for the market dynamics.</p> <p>5 This was pretty common to ask</p> <p>6 for information from accounts on products,</p> <p>7 especially near in for launch.</p> <p>8 Q. So, if you had -- if you look at</p> <p>9 the sentence on the very top of that page</p> <p>10 it says: We have a ton of inventory with</p> <p>11 60 percent share target of a much higher</p> <p>12 base of business in CY 11 budget and it's</p> <p>13 going short soon.</p> <p>14 Does that suggest to you that,</p> <p>15 if you have inventory, that it would have</p> <p>16 been approved, or no?</p> <p>17 MR. DIAMANTATOS: Objection to</p> <p>18 form; foundation; calls for</p> <p>19 speculation.</p> <p>20 A. I mean, again, we -- as part of</p> <p>21 a launch -- so, first of all, if the</p> <p>22 product was approved, to be helpful, if</p> <p>23 you just could tell me. I don't recall.</p> <p>24 But if it was unapproved, it's typical to</p>
<p style="text-align: right;">Page 111</p> <p>1 make -- first, you have to make -- you</p> <p>2 have to validate the product. So in order</p> <p>3 to validate the product, you have to make</p> <p>4 three batches. So that's inventory right</p> <p>5 there. But it's not available because the</p> <p>6 product's not approved, so it would be</p> <p>7 under quarantine. So that's the</p> <p>8 inventory.</p> <p>9 It was a practice that we had at</p> <p>10 Actavis was we wanted to be prepared with</p> <p>11 inventory in anticipation of launch so we</p> <p>12 can get to market on day one. Not all</p> <p>13 generic companies had that approach. Some</p> <p>14 will wait until they have approval, and</p> <p>15 then they will go and validate because of</p> <p>16 the concern potentially of the inventory</p> <p>17 going short date.</p> <p>18 This was an item which we</p> <p>19 thought had high value. It was in our</p> <p>20 target. We anticipated we have approval.</p> <p>21 So part of the business plan would be to</p> <p>22 make inventory.</p> <p>23 And, like I say, if we had it</p> <p>24 approved, it would be helpful, you could</p>	<p style="text-align: right;">Page 112</p> <p>1 show me the document, I could provide</p> <p>2 better commentary. I don't specifically</p> <p>3 remember it being approved in this time</p> <p>4 frame.</p> <p>5 Q. Okay. And, do you remember it</p> <p>6 being approved at all?</p> <p>7 A. Again, I don't believe it was</p> <p>8 approved during my time at Actavis. It</p> <p>9 may have been approved later in the time.</p> <p>10 But I believe it was subsequently was</p> <p>11 approved under Watson or Actavis after</p> <p>12 2012.</p> <p>13 But, again, that's very easy to</p> <p>14 check. You can check the orange book.</p> <p>15 Q. Okay. And, when you stated</p> <p>16 here: Yes, no need to be shy on this one.</p> <p>17 Full bore. You would have been referring</p> <p>18 to just moving -- moving forward with the</p> <p>19 approval process in the Walgreens offer?</p> <p>20 A. That's two separate things.</p> <p>21 So, again, the approval process</p> <p>22 for a new drug or even with a new drug is</p> <p>23 with the regulatory organization and with</p> <p>24 the FDA from a commercial preparation. So</p>

1 Mike's responsibility was sales and
2 marketing for the generics. In his plan
3 would have been a target for revenue for
4 this product subject to it being approved,
5 and part of that would be prelaunch
6 planning to understand potentially which
7 customers were interested in the product.
8 There may have been multiple generics who
9 were coming to market, which is, again,
10 why it was important to be ready on day
11 one.

12 I don't specifically recall the
13 dynamics. But, if you look at the chart,
14 it looks like we had a pretty aggressive,
15 you know, high target for the percentage
16 of the generic market we were going to
17 supply. So, 40 percent or 40 -- or 60
18 percent gives me an indication that we
19 were thinking it was going to be us first
20 or us with an authorized generic or
21 possibly us with another competitor. So,
22 that's one of the success metrics in the
23 space is you be prepared for launch and
24 get your product out when it's approved.

1 Q. And then he goes on to say: PS.
2 Kadian was a very solid launch with 42
3 percent locked down prior to an AG. We
4 can't be on red alert for 18 months.

5 Do you see that?

6 A. Yes.

7 Q. What does 42 percent locked down
8 mean?

9 MR. DIAMANTATOS: Objection;
10 form; foundation; calls for
11 speculation.

12 A. So, in this time frame, this is
13 dated November of 2011. So, at some point
14 prior to that, there was a generic
15 approval on Kadian. So, we were -- we,
16 Actavis, was selling the -- we're selling
17 the branded version of Kadian. And it's a
18 typical practice for brand companies, and
19 so again, we had a brand asset, that when
20 a generic -- when a generic was approved
21 that the brand company comes out with a
22 what's called an authorized generic. And
23 so, that's what we had prepared materials,
24 again, and that's what -- so, that's what

1 Q. And, so, what did you mean by:
2 Yes, no need to be shy on this one. Full
3 bore?

4 A. I was -- I was agreeing with
5 Mike, head of sales, that he should go out
6 there, he should be out talking with
7 customers and try to find potentially more
8 than our target 'cause that would be a way
9 potentially to exceed our goals.

10 But, again, just because a
11 customer provides usage and provides even
12 pricing and such, that doesn't mean you
13 have the business, and it doesn't really
14 count until you have the product approved
15 and you have their signed order, til you
16 actually -- so, experience would be
17 sometimes you have to talk to 30 people or
18 ten accounts to get six to commit.

19 Q. And, Perfetto's response to you
20 was: I need not be told. Just get me
21 product at market formation and I will
22 make you look like a hero.

23 Do you see that?

24 A. Yes.

1 the 42 percent is, that I guess our
2 authorized generic was marketing 42
3 percent of the available prescriptions
4 after -- after the generic market formed.

5 Q. I see.

6 And, what's AG refer to in that
7 same sentence?

8 A. AG stands for authorized
9 generic.

10 Q. And, what was your understanding
11 of -- of red alert in that context?

12 MR. DIAMANTATOS: Objection to
13 form; foundation.

14 A. I would -- my read of this is,
15 again, Mike being the head of sales,
16 knowing that the Suboxone product had been
17 in our pipeline, we had expected to be
18 approved earlier than this date. So,
19 essentially, he was preparing to go to
20 market. We had product. The approval was
21 being delayed. So, essentially, the
22 organization was ready to go, on red alert
23 to launch the product and we kept waiting
24 for the -- the final approval indication,

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<p>1 which, again, didn't happen for quite some 2 time. 3 That's, again, very typical in 4 the generic space. There's lots of 5 products over my time at Actavis and 6 subsequent companies where we would 7 prepare for launch and whatever reason the 8 launch would be delayed. 9 MS. BAIG: Let's have this 10 document marked as Exhibit 6. It's a 11 document that's Bates stamped 12 ALLERGAN_MDL_01397096 through '7159. 13 I'll note that '7159 is a multipage 14 document. It starts as an email from 15 Kevin Bain to Chris Quigley. 16 (Boothe Exhibit 6, email chain 17 ending October 18, 2006, with 18 attachment, Bates No. 19 ALLERGAN_MDL_01397096 to 01397159, was 20 marked for identification, as of this 21 date.) 22 BY MS. BAIG: 23 Q. Who is Kevin Bain? 24 A. I'm just looking at the</p>	<p>1 document. 2 (Perusing document.) 3 Okay. 4 Q. Were you responsible for setting 5 budget for the Actavis companies? 6 A. Could you repeat that? 7 Q. Were you responsible for setting 8 the budget for the Actavis companies? 9 A. Yes and no. Again, Actavis 10 Group was the parent. Actavis U.S. was 11 the U.S. portion of it. So I participated 12 in the development of the budgets for the 13 U.S. portion of Actavis. And, again, 14 there was a negotiation between corporate 15 and the division. And then within 16 Actavis, we had the lines of business, as 17 I mentioned before, solid oral dose or 18 semisolid to liquid, or it could have been 19 by facility, Elizabeth or Lincolnton or 20 Owings Mills. 21 So, once we had the direction 22 from corporate for the U.S. targets, then 23 yes, I, myself and my leadership team 24 would then cascade that through the</p>
Page 119	Page 120
<p>1 organization. 2 Q. Okay. And, who is Kevin Bain? 3 A. Ken Bain was the chief financial 4 officer of Actavis at the time of this 5 email in 2006. Actavis U.S. 6 Q. Okay. Thank you. 7 And Chris Quigley? 8 A. Chris Quigley was in the finance 9 organization. He was basically what would 10 be called an FP&A, financial planning and 11 analysis. So, the finance portion of 12 working on the budgeting and the targets 13 and such. 14 Q. And I see next to his name it 15 says AFCRA Alpha. Alpha. 16 Is that just because he moved 17 over from AI -- 18 A. What's that? 19 Q. It's 2006. 20 Is this an Alpha document? 21 MS. WELCH: Objection to form. 22 A. October 18, 2006, the generic 23 portion of Alpha was part of Actavis. 24 That doesn't necessarily mean</p>	<p>1 the IT systems had caught up, so, with 2 integration. 3 Q. Okay. And Gary DePaolo? 4 A. Gary DePaolo. 5 Q. What's his position? 6 A. At that time, Gary was the 7 controller for the U.S. business, reported 8 to Kevin. 9 Q. Okay. And, this is a budget 10 presentation. 11 Did you create this document or 12 participate in the creation of this 13 document? 14 A. And, again, I -- it's dated 15 October. So I don't know if it's final. 16 It's probably a draft. Looks like it was 17 anticipation of a presentation. Look at 18 page 2 where everybody was participating, 19 all functional and other leads. 20 So, what's the question, 21 specifically? 22 Q. Did you participate in creating 23 this document? 24 A. I'm not sure I specifically</p>

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1 participated in creating the document, but
2 I certainly was a participant in this --
3 this review or meeting dated October 19th.

4 Q. Okay. And, what was the purpose
5 of it? Just to review the budget for the
6 U.S. company?

7 MR. DIAMANTATOS: Objection to
8 form.

9 A. Well, as I mentioned before, the
10 way the budgeting process worked was I
11 mentioned the November date was usually
12 when we had a conversation with corporate.
13 So, since this was October, this would
14 have been an internal activity to
15 understand from all the different
16 stakeholders the components that would
17 lead into our U.S. target bone -- target
18 budget, what we would present to corporate
19 as our proposal for budget. And, again,
20 then in November there would be a
21 corporate review and there would be, I can
22 guarantee you there would be changes and
23 more likely the changes would be the
24 targets would be set higher than what the

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1 team had proposed, which is a very typical
2 practice across pharmaceutical companies
3 and all companies.

4 Q. And, if you look at page 11 of
5 the Power Point it identifies "Quarterly
6 sales by major product."

7 Is that right?

8 A. Yes, page 11. Yeah.

9 Q. And it identifies oxycodone
10 tablets third on the list.

11 Do you see that?

12 A. Yes.

13 Q. Is that the third largest
14 product at that time?

15 MR. DIAMANTATOS: Objection to
16 form.

17 A. Again, so, the 2007 I believe is
18 a forecast.

19 2006, this is dated October of
20 2006. So, some portion of the 2006
21 numbers are also a forecast. But, based
22 on the first half of the year, right, it
23 was the third largest individual generic
24 product sold.

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1 Q. And, do you know for oxycodone
2 tablets why there would be such a large
3 discrepancy in sales between the first
4 half of the year and the second half of
5 the year for 2006?

6 MS. WELCH: Objection to form.

7 A. You'd -- I don't specifically
8 recall.

9 If you have any information, I'd
10 be happy to review it.

11 Q. You don't recall why sales would
12 have gone down for quarters 3 and 4 of
13 2006?

14 MS. WELCH: Objection to form.

15 A. Sitting right here in 2019, I
16 don't specifically recall activities of
17 2006.

18 Q. Okay.

19 A. Again, I don't know if Q3 and Q4
20 might not even be actuals. It's not clear
21 from the chart if those are actuals or
22 those are projections.

23 Q. And, if you move to page 24
24 there's a heading on that page "Products

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1 Not Launched 2007 Versus LT 2007."

2 What's your understanding of
3 what that means?

4 (Pause.)

5 Q. I'm looking at the page numbers
6 on the Power Point, page number 24.

7 A. I'm just trying to look at the
8 context so I can provide a more complete
9 answer.

10 Products not launched -- so,
11 again, I don't specifically recall what LT
12 2007 was, some sort of a long-term
13 planning document.

14 But, this is saying as of
15 October -- as of October 2006, products
16 not launched 2007 versus L -- all right.

17 So, my interpretation of this
18 would be these are products that may have
19 been in an earlier version of some sort of
20 planning assumption, the LT 2007, that
21 based on this document we are not
22 including as revenues in this proposed
23 2007 budget.

24 And that could be for a whole

1 host of reasons. One could be that,
2 again, the product approval is delayed.
3 For example, the oxycodone ER would have
4 been a Paragraph IV. So the litigation
5 was ongoing. There might not have been a
6 decision. Could have been related to the
7 fact that --

8 Q. What do you mean by Paragraph
9 IV?

10 A. Paragraph IV is a process when
11 you're a generic pharmaceutical company
12 and you file an abbreviated new drug
13 application, or an ANDA, there's different
14 classifications of how you file it with
15 the FDA. And a Paragraph IV is basically
16 you are filing an abbreviated new drug
17 application against an NDA product, or a
18 new drug application, where this new drug
19 has existing intellectual property, or IP.

20 So, the Paragraph IV process was
21 created in 1984 as part of the
22 Hatch-Waxman Drug Competition and Patent
23 Restoration Act, and what that means is
24 that it enabled generic drug companies an

1 revenue -- or, includes some number of
2 revenue for oxycodone ER, but it's 16.6
3 million less than what was in an earlier
4 long-term plan, the LT 2007.

5 That's my understanding, but I
6 may -- may or may not be correct.

7 Q. And if you look at page 34 of
8 the Power Point.

9 A. Page 34 of the Power Point.
10 (Pause.)

11 Okay.

12 Q. What does AMID, A-M-I-D, refer
13 to?

14 A. AMID (different pronunciation.)

15 That was the Actavis -- Actavis
16 Iceland acquired two companies in the
17 United States. They acquired the Alpharma
18 generics business and they acquired a
19 company called AMID. It's also a generic
20 manufacturer based in northern New Jersey.

21 Q. Okay. And here you see there's
22 a reference to a 2006 8 plus 4 plus and a
23 further reference to oxycodone ER tabs and
24 oxycodone?

1 opportunity to file, in advance of patent
2 expiry, to potentially bring lower cost
3 affordable generic products to market to
4 provide access to affordable medicines for
5 patients.

6 Paragraph IV process enables,
7 with the filing, an automatic 30-month
8 stay of approval that the FDA cannot
9 approve -- assuming, by the way, that the
10 brand company opts to sue you, that's
11 their right to do or not do, during that
12 period of time, during that 30-month
13 period of time, the FDA cannot approve
14 application. That supposedly was set back
15 in the day as an appropriate time for any
16 pending litigation activities to be
17 resolved. Not necessarily the case and
18 has yet to be the case. But that's what a
19 Paragraph IV is.

20 Q. So, what does the \$16.6 million
21 next to oxycodone ER represent?

22 A. Again, in this chart, my
23 understanding would be that our budget
24 here, proposed budget does not include any

1 A. Yes.

2 Q. And, what is this showing?

3 MS. WELCH: Objection to form.

4 A. Well, again, this is a proposed
5 budget. So, what the top part 8 plus 4
6 plan would have been sort of the run rate
7 base business assumption. The oxycodone
8 ER tabs, it's a minus 17 million, and the
9 comment there is "delayed IP matter." So,
10 if in a prior version there's an
11 expectation of revenue for this product,
12 this draft budget is saying it's going to
13 be 16.562 million less. I don't know -- I
14 don't know if that was the full amount or
15 if the budget was 30 million and it's down
16 to 14. I don't specifically recall. But
17 basically it's saying it's a vary -- it's
18 a variation from an earlier planning
19 assumption.

20 MS. BAIG: We'll the next
21 document marked as Exhibit 7. It's
22 Bates stamped Allergan_MDL_01474505
23 through '4557 appeared it's entitled
24 "Development and Manufacturing

1 Services Agreement."
 2 (Booth Exhibit 7, Development
 3 and Manufacturing Services Agreement
 4 effective February 1, 2008, Bates No.
 5 ALLERGAN_MDL_01474505 to 0147557, was
 6 marked for identification, as of this
 7 date.)
 8 THE WITNESS: Okay.
 9 BY MS. BAIG:
 10 Q. Do you have an understanding of
 11 what this agreement is?
 12 A. It's a -- lots of pages. Could
 13 I have a chance to review it?
 14 Q. Sure.
 15 What I'll tell you is that in
 16 the first paragraph of the second page, do
 17 you see that?
 18 A. Can I review the document?
 19 Q. Yeah.
 20 MS. BAIG: Let's go off the
 21 record.
 22 THE VIDEOGRAPHER: We're going
 23 off the record.
 24 The time is approximately 11:22

1 business, but the -- the brand proprietary
 2 items, we were Kadian and then a
 3 development item, which I think became
 4 Embeda, stayed with Alpharma, but they
 5 were manufactured, they were developed,
 6 there were resources that were commingled.
 7 So this was basically like a transition
 8 services agreement to clarify roles and
 9 responsibilities, payments, other sorts of
 10 things, between the two companies at that
 11 facility.
 12 Q. When you were at Actavis, it was
 13 the -- the director of generic marketing
 14 reported to you.
 15 Is that right?
 16 A. Which time frame?
 17 Q. At any time -- time frame when
 18 you were at Actavis, did the director of
 19 generic marketing report to you?
 20 MS. WELCH: Objection to form.
 21 A. No.
 22 Q. So, Jinping McCormick never
 23 reported directly to you?
 24 A. She did when I was at Alpharma.

1 a m.
 2 (Recess taken.)
 3 THE VIDEOGRAPHER: We're going
 4 back on the record.
 5 The time is 11:23 a m.
 6 BY MS. BAIG:
 7 Q. What's your understanding as to
 8 what this agreement is?
 9 A. It's a -- what we called a --
 10 it's a development and manufacturing
 11 service -- it's basically an agreement
 12 between Actavis and Alpharma to address
 13 the supply and other components of two
 14 products which were one was in active
 15 manufacturing and one was in development
 16 at the Elizabeth, New Jersey facility,
 17 which was part of Actavis, and its
 18 obligations and arrangements with Alpharma
 19 to support manufacturing of these two
 20 products for Alpharma.
 21 The reason that this was in
 22 place was because when Alpharma sold the
 23 generics business to Actavis, the facility
 24 in New Jersey went with the generics

1 I hired her in 2004.
 2 Q. Okay. And, did she report to
 3 you for her entire time at Alpharma?
 4 A. No.
 5 Q. Did she -- when did she report
 6 to you at Alpharma?
 7 A. 2004.
 8 Q. Just 2004?
 9 A. I believe so.
 10 Q. Okay. And, when you were at
 11 Actavis, Jinping McCormick reported
 12 directly to Mike Perfetto.
 13 Is that right?
 14 A. I believe that's my
 15 recollection.
 16 Q. And Perfetto reported to you?
 17 A. Yes.
 18 Q. And, when you were at Actavis,
 19 did the director of branded marketing
 20 report to you?
 21 A. No.
 22 Q. So, Jennifer -- was Jennifer
 23 Altiers [sic] the director of branded
 24 marketing?

1 MR. DIAMANTATOS: Objection to
2 form.

3 A. Jennifer Altier was with Actavis
4 2011 or 2012. I believe she was a
5 contractor or a consultant. I'm not sure
6 we actually ever made her a full-time
7 employee.

8 But, again, if you have a
9 document, I'd be happy to review it and
10 comment on it.

11 Q. And, did Jennifer Altiers report
12 to Perfetto?

13 A. No.

14 Q. Who did she report to, to your
15 knowledge?

16 A. Well, again, I'm not sure she
17 was an employee. So if she wasn't an
18 employee, she didn't report to anybody.
19 She would have been brought on a contract
20 basis as a consultant.

21 But she was involved with the
22 Kadian brand side after we had brought
23 that back at Actavis.

24 Q. Well, even if she was a

1 consultant, she would be taking direction
2 from someone at the company; would she
3 not?

4 MR. DIAMANTATOS: Objection to
5 form.

6 A. Again, I'm uncomfortable
7 answering that 'cause there's all sorts of
8 legal implications about who's considered
9 employees back from the micro SOS.

10 So, if someone was not an
11 employee of the company, how their
12 relationship in reporting would be
13 something that I'd rather have someone
14 who's more familiar with employment law
15 comment on.

16 But she was brought in to do
17 specific projects.

18 Q. Did you have another marketing
19 director for brand name drugs?

20 MR. DIAMANTATOS: Objection to
21 form.

22 A. Yes.

23 Q. Who was that?

24 A. Nathalie Leitch. I don't know

1 what her specific title was, but she was
2 responsible for the proprietary side of
3 the Actavis business.

4 Q. And, who did she report to?

5 A. She reported to Terry Fullem.

6 Q. And, who did Terry Fullem report
7 to?

8 A. Me.

9 Q. And, what was Terry Fullem's
10 position?

11 A. His responsibility changed over
12 time.

13 So, a specific time zone, time
14 area you want me to comment on?

15 Q. What were his positions while
16 you were at Actavis?

17 MS. WELCH: Objection to form.

18 A. So, again, starting in 2007 --
19 or, sorry. 2006 with Actavis, Terry was
20 the general manager of the semisolid and
21 liquids part of the business, 2007. And
22 then in 2008 or 2006, I don't
23 specifically -- either way, ultimately I
24 put Terry responsible for product

1 selection, portfolio, business
2 development, and then new ventures, and
3 one of the new ventures when we acquired
4 the Kadian asset from Alpharma at the end
5 of 2008, I put Terry in responsible for
6 the specialty products as well as our
7 injectable portfolio which we were
8 developing.

9 Q. Were there any other marketing
10 directors while you were at Actavis other
11 than Natalie Leitch?

12 MS. WELCH: Objection to form.

13 A. Again, I mean, we had marketing
14 people.

15 So, director like by title or
16 director in terms of they were involved in
17 marketing?

18 Q. I mean leading the marketing for
19 brand name drugs.

20 MR. DIAMANTATOS: Objection to
21 form.

22 A. Just Nathalie, is my
23 understanding.

24 Q. And she reported to Terry Fullem

1 in what time frame?

2 A. From the -- I believe from the
3 time she joined the company. I don't know
4 when that was. Until the time that the
5 Watson transaction closed.

6 Q. Generally speaking, do you have
7 an understanding as to which drugs brought
8 in more money to the company: the branded
9 drugs or the generic drugs?

10 MS. WELCH: Objection to form.

11 A. What's the question?

12 Q. Generally speaking, do you have
13 an understanding as to which drugs brought
14 in more money to the company: the branded
15 drugs or the generic drugs?

16 MS. WELCH: Same objection.

17 A. In which time frame?

18 Q. While you were at Actavis.

19 MS. WELCH: Same objection.

20 A. Well, again, if -- if -- I
21 believe Kadian was under 200 million. The
22 business was between 600 and 900-plus
23 million.

24 So, predominantly, the business

1 was generic drugs.

2 Q. I think you mentioned for the
3 opioids that Actavis was selling when you
4 were there Kadian, generic OxyContin,
5 generic Opana ER, oxycodone IR.

6 And I'm wondering if Actavis was
7 also selling fentanyl at any time while
8 you were there?

9 A. Yes, we did sell fentanyl
10 product, correct.

11 Q. And, when did you do that?

12 A. We acquired a company in late
13 2006. They had the fentanyl product in
14 their portfolio. The product was approved
15 in two thousand and -- early late 2006 or
16 early 2007. So we began marketing it
17 around that time, as soon as it was
18 approved.

19 Q. And, which company was that?

20 A. The company was called Abraca.
21 It was in Florida.

22 Q. Did you ever have any
23 involvement with a drug called Norco?

24 A. What's it called?

1 Q. Norco?

2 MR. DIAMANTATOS: Objection to
3 form.

4 A. What's the generic compound
5 name?

6 Q. I don't have the answer to that.
7 I'm just asking you if you
8 recall working on a drug named Norco.

9 MR. DIAMANTATOS: Objection to
10 form.

11 A. No.

12 Q. Did you review market research
13 and market share reports for -- for the
14 portfolio of products regularly?

15 MS. WELCH: Objection to form.

16 A. What do you mean by market
17 research?

18 Q. You know that Jinping McCormick
19 testified that she did a good deal of
20 market research, and I'm wondering if you
21 reviewed that.

22 MS. WELCH: Objection to form.

23 MR. DIAMANTATOS: Objection to
24 form.

1 A. The marketing team would
2 consist -- would frequently update what
3 was called market share reports, which
4 would be the data from the IMS or the
5 Wolters Kluwer crew that would then show
6 prescription level data and again for the
7 generics would be share prescriptions
8 between if it was Actavis or Watson or
9 Teva or whomever else was in the space.
10 That's the market share reports, and I
11 would say that's probably what she meant
12 by market research.

13 But that doesn't mean, again, in
14 her role that she wasn't looking and
15 trying to see what was going on in the
16 space. That was her -- that was her
17 responsibility.

18 Q. And, would you review some of
19 that as well? Would she present it to
20 you?

21 MS. WELCH: Objection to form.

22 MR. DIAMANTATOS: Assumes facts.

23 A. Again, the market share report
24 was -- was shared with lots of people in

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1 the organization. It was a regular thing.
2 It might have been done weekly or monthly.

3 So, yes, I would receive those.
4 I won't admit that I looked at them every
5 time.

6 And, as part of our budgeting
7 process, the market share and the market
8 research or the data about specific
9 molecules, specific prescription growth or
10 decline, competitive forces were all
11 critical inputs to our forecast, our
12 budgets and, quite frankly, our everyday
13 supply/demand planning activities.

14 Q. Which you also reviewed,
15 correct?

16 MS. WELCH: Objection to form.
17 BY MS. BAIG:

18 Q. Reviewed the marketing and
19 financial evaluations for the products?

20 MS. WELCH: Objection to form.

21 A. Could you be more specific?

22 Q. I'm just asking if you
23 generally, as part of your -- your job
24 responsibilities, you reviewed marketing

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1 and financial evaluations for various of
2 the products.

3 A. At times, yes.

4 Q. Including opioid products,
5 correct?

6 A. Could you be more specific?

7 Q. Did you look at financial
8 evaluations and marketing evaluations for
9 opioid products?

10 MS. WELCH: Objection to form.

11 A. What do you mean by financial
12 evaluations?

13 Q. Jinping McCormick testified that
14 she put together a number of financial
15 evaluations and marketing evaluations.

16 A. But what does that mean,
17 evaluations?

18 Q. Do you have an understanding as
19 to what that means, or no?

20 A. I'm asking you, so.

21 Q. Right. But you're the one being
22 deposed.

23 Do you have an understanding as
24 to whether or not you reviewed any

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1 financial evaluations for your opioid
2 products during your tenure at Actavis?

3 MS. WELCH: Objection to form.

4 A. I'd be happy to review on a
5 document if you -- I don't specifically
6 recognize the -- what Jinping testified to
7 as what marketing or financial evaluation
8 meant.

9 Q. Okay. So you don't have an
10 understanding as to what a financial
11 evaluation is?

12 MR. DIAMANTATOS: Objection to
13 form; mischaracterizes the witness's
14 testimony.

15 A. That's not what I said.

16 Q. Do you have an understanding as
17 to what a financial evaluation is?

18 MR. DIAMANTATOS: Objection;
19 form; asked and answered.

20 A. If you put one in front of me,
21 I'd be happy to review it.

22 Q. I'm just asking you, as you sit
23 here today with your many years of
24 experience, as to whether or not you have

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1 an understanding as to what a financial
2 evaluation is.

3 MR. DIAMANTATOS: Objection to
4 form.

5 MS. WELCH: Objection to form.

6 MR. DIAMANTATOS: Asked and
7 answered; argumentative.

8 A. Yeah, I do.

9 Q. Okay. What's your
10 understanding?

11 A. But you asked specifically about
12 opioid products, and I'm not aware if we
13 did those or didn't do those. So if you
14 show me --

15 Q. That's fine. Then you can just
16 testify --

17 THE COURT REPORTER: Only one
18 person can speak at a time.

19 BY MS. BAIG:

20 Q. My question is do you have an
21 understanding as to what a financial
22 evaluation is, and what is your
23 understanding?

24 MR. DIAMANTATOS: Objection;

1 form; argumentative; asked and
 2 answered.
 3 A. Again, a financial evaluation
 4 could be some set of potential revenues,
 5 costs, some sort of a P&L, some sort of an
 6 MPV. There's all sorts of different
 7 models. They could be product specific.
 8 They could be class specific. They could
 9 be region specific. I don't know what --
 10 inputs could be GDP growth. There's all
 11 sorts of things that could go into a
 12 financial evaluation. It could be some
 13 sort of a model. There could be scenarios
 14 on it.
 15 But I -- you asked me
 16 specifically about what Ms. McCormick, and
 17 I just asked if you could show me an
 18 example, I could comment on it.
 19 Q. Did you review marketing
 20 forecasts for pipeline products?
 21 MS. WELCH: Objection to form.
 22 A. Yes.
 23 Q. Did you review sales projections
 24 for products, including opioids?

1 MS. WELCH: Objection to form.
 2 A. What do you mean by marketing
 3 tools?
 4 Q. Do you have a general
 5 understanding of what a marketing tool is?
 6 A. I'd be happy if you provided
 7 some, I could comment if I thought that
 8 was a marketing tool or not.
 9 I mean, generic drugs generally
 10 don't do a lot of marketing.
 11 Q. Actavis did have a generics
 12 marketing department; did it not?
 13 A. Yes.
 14 Q. And, did that department have
 15 work to do?
 16 A. Yes.
 17 Q. And, what are the marketing
 18 mechanisms that the company used to market
 19 its generic drugs?
 20 MS. WELCH: Objection to form.
 21 A. Again, the marketing department
 22 predominantly did forecasting. So, the
 23 marketing team, as Ms. McCormick led,
 24 would look at the marketing information

1 MS. WELCH: Objection to form.
 2 A. Yes.
 3 Q. You reviewed annual budget and
 4 three-year plan processes?
 5 A. Yes.
 6 Q. Did you have to approve
 7 marketing expenses?
 8 MS. WELCH: Objection to form.
 9 A. No. I mean, certainly to a
 10 certain level of authorization. So
 11 certainly we had a delegation of
 12 authority. We had an authorization
 13 process. Certain levels of expenses could
 14 be approved depending on your -- your --
 15 your authority level, at a director level
 16 or at a manager level, at a VP level or at
 17 a senior VP level and ultimately to me.
 18 So, depending on the amount of
 19 the expense, either my team would do them
 20 or I would do them.
 21 Q. Are you aware of what marketing
 22 tools were used by Actavis to drive sales
 23 of its generic drugs, including opioids,
 24 while you were at the company?

1 provided by third parties such as IMS,
 2 look at script datas, and then would look
 3 at -- that would help to inform from a
 4 trend perspective what the available
 5 scripts would be.
 6 The marketing team also was
 7 involved in prelaunch activities. So the
 8 extent of which when we were putting a
 9 product to market, we would have to make
 10 certain that it was registered and that we
 11 had labeling for it, that we actually
 12 participated in trade events, that we
 13 sometimes we would put an advertisement,
 14 or form of an announcement. Really not
 15 advertisement. Announcement that products
 16 were available. We had a product catalog
 17 that was available in both hard copy and
 18 electronic.
 19 But the bulk of the marketing
 20 team, and I'm using quotes for marketing
 21 'cause most of the activity that the
 22 marketing activity does in a generic drug,
 23 it's not unique to Actavis, is mostly
 24 product forecasting and then working very

1 closely with supply chain organization to
2 make certain that the supply chain
3 organization knew the forecast, the volume
4 forecast, so they could build accordingly.

5 Q. But internally, you referred to
6 that team as a marketing team, correct?

7 A. Me and probably every other
8 generic organization. Very common
9 nomenclature.

10 Q. And, with respect to the
11 announcements that you alluded to,
12 internally you referred to them as
13 advertisements, correct?

14 A. That's not what I said.

15 Q. I'm asking you.

16 A. Could you repeat the question,
17 please?

18 Q. A moment ago you referred to
19 announcements that the marketing
20 department used to announce its drugs.
21 Internally those were referred to as
22 advertisements.

23 Isn't that right?

24 MS. WELCH: Objection to form.

1 A. The last part about the
2 internally, I mean, so what we would do,
3 again, potentially is we would put a print
4 ad, so therefore an advertisement, to
5 announce a product approval or a product
6 becoming available. All those materials
7 would also go through a marketing, a
8 regulatory and a legal review consistent
9 with DDMAC.

10 Q. And, did you have something
11 called sizzle slides?

12 A. What are sizzle slides?

13 Q. My question to you is are you
14 aware of sizzle slides?

15 A. Could you show me one?

16 Q. I'm just asking you if you have
17 an understanding of what a sizzle slide
18 is, if you ever heard of that term, or if
19 they were used at Actavis.

20 MS. WELCH: Objection to form.

21 MR. DIAMANTATOS: Objection to
22 form.

23 A. Again, if you could show me one,
24 I could comment on it.

1 I'm not specifically remembering
2 it.

3 Q. So you've never heard the term
4 "sizzle slide," that you recall right now?

5 MR. DIAMANTATOS: Objection to
6 form; mischaracterizes the witness's
7 testimony.

8 A. In the context of what? What;s
9 a sizzle --

10 Q. Marketing drugs.

11 MR. DIAMANTATOS: Same
12 objection.

13 A. I'd be happy to respond or
14 comment if you show me something.

15 Q. My only question to you right
16 now is have you heard that term "sizzle
17 slide"?

18 MS. WELCH: Objection to form.

19 MR. DIAMANTATOS: Asked and
20 answered.

21 A. From whom?

22 Q. From anyone.

23 A. You'd have to show it to me so I
24 could comment on it.

1 Q. So you don't remember?

2 The answer is -- it's a
3 yes-or-no question.

4 Do you recall hearing that term
5 before or not?

6 MR. DIAMANTATOS: Objection to
7 form in instructing the witness how to
8 answer the question.

9 A. No.

10 Q. Do you recall that one of the
11 marketing tools used at Actavis to market
12 generic drugs was email blasts to
13 pharmacists?

14 MS. WELCH: Objection to form.

15 A. Yes.

16 Q. Do you recall that one of the
17 marketing tools used by Actavis to promote
18 its generic drugs was targeting certain
19 magazines for advertisements?

20 MS. WELCH: Objection to form.

21 MR. DIAMANTATOS: Assumes facts.

22 A. Can you repeat that question,
23 please?

24 MS. BAIG: Could you read it

1 back, please?
 2 (The requested portion of the
 3 record was read by the Court Reporter.)
 4 A. Yes.
 5 Q. And, what magazines do you
 6 recall were targeted for advertisements?
 7 MS. WELCH: Objection to form.
 8 A. It would be like industry
 9 publications, U.S. Pharmacist, Chain Drug
 10 News.
 11 Again, I mean, targeting, we
 12 weren't targeting. We would write a check
 13 and place an ad. So I don't know if
 14 that's really targeting.
 15 But we would pick the ones we
 16 thought would had the greatest reach to
 17 the intended customer audience.
 18 Potentially pharmacists. Not doctors, by
 19 the way, pharmacists.
 20 Q. And, was it the generics
 21 marketing division that was responsible
 22 for that?
 23 A. For what?
 24 Q. For placing ads in magazines.

1 others?
 2 MS. WELCH: Objection to form.
 3 A. No.
 4 Q. Do you recall --
 5 A. Not that I'm aware of.
 6 Q. Do you recall that there were
 7 fax blasts that were used to promote the
 8 generic drugs?
 9 MR. DIAMANTATOS: Objection to
 10 form.
 11 A. I believe fax blasts were sent
 12 to wholesalers or distributors, yes.
 13 Q. Do you recall there being coupon
 14 programs that were used to market generic
 15 drugs?
 16 MS. WELCH: Objection to form.
 17 A. No.
 18 Q. Do you recall working with any
 19 third parties to market your generic
 20 drugs?
 21 MS. WELCH: Objection to form.
 22 A. Yes.
 23 Q. Who do you recall working with
 24 to market generic drugs, including

1 A. Yes.
 2 Q. Do you recall the generics
 3 marketing division using telephone
 4 campaigns to market drugs?
 5 MS. WELCH: Objection to form.
 6 A. Telephone campaigns to market
 7 drugs, what does that mean?
 8 Q. I'm just asking if you have an
 9 understanding of what that is or whether
 10 it was used.
 11 MS. WELCH: Objection to form.
 12 A. No.
 13 Q. You don't recall there being
 14 telephone campaigns of any sort?
 15 A. Again, if you could provide me
 16 something to review.
 17 I don't specifically recall
 18 right now.
 19 Q. Do you recall that there were
 20 direct mailers that were sent out --
 21 A. Yes.
 22 Q. -- to pharmacists?
 23 A. Yes.
 24 Q. Were direct mailers sent out to

1 opioids?
 2 MS. WELCH: Objection to form.
 3 A. I don't specifically recall
 4 anybody.
 5 If you provide me, I can comment
 6 on them. But I know we used third
 7 parties.
 8 Q. You don't recall any third party
 9 that you might have used to market drugs?
 10 A. Correct.
 11 Q. And, do you recall any sort of
 12 telemarketing of generic drugs?
 13 MS. WELCH: Objection to form.
 14 A. No.
 15 Q. Do you recall a company called
 16 Media Media?
 17 A. Media Media?
 18 Q. Mm-hm.
 19 A. No.
 20 MS. BAIG: We'll have this
 21 document marked as Exhibit 14, please.
 22 (Boothe Exhibit 8, email dated
 23 January 27, 2009, with attachment,
 24 Bates No. ALLERGAN_MDL_01100742 to

1 01100752, was marked for
 2 identification, as of this date.)
 3 MR. DIAMANTATOS: You said
 4 Exhibit 14?
 5 MS. BAIG: Sorry. Exhibit 8.
 6 And it is Bates stamped
 7 ALLERGAN_MDL_01100742 through '752.
 8 It starts as an email from Irene Katz
 9 at Media Media.
 10 THE WITNESS: Medimedia.
 11 MS. BAIG: Sorry. Medimedia.
 12 BY MS. BAIG:
 13 Q. Do you recall Medimedia?
 14 A. No.
 15 Q. Dated January 27th, 2009.
 16 And you'll see there's a
 17 reference in the first paragraph to a
 18 Kadian coupon artwork.
 19 A. Yes.
 20 Q. Are you familiar with the use of
 21 a Kadian coupon?
 22 A. Yes.
 23 Q. And, what was that?
 24 A. This is a co-pay coupon for

1 for their prescriptions.
 2 Q. And Natalie Leitch oversaw this
 3 program?
 4 A. Nathalie was, again, the
 5 marketing director for Kadian. So yes.
 6 Q. And the Kadian -- in the first
 7 line of the first page it states: We have
 8 updated the Kadian coupon artwork to
 9 reflect the new phone number at the help
 10 desk.
 11 A. Yes.
 12 Q. Was it that the Kadian coupon
 13 would direct people to call a phone number
 14 in the event they needed help?
 15 A. Yes.
 16 Q. And, who would staff the help
 17 desk?
 18 A. I don't know if -- I don't
 19 believe it was -- I think this
 20 Medimedia -- it was a third party, more
 21 than likely.
 22 Q. So it would have been employees
 23 at Medimedia that would staff the help
 24 desk?

1 branded Kadian, not generic.
 2 All those last questions were
 3 all about generic.
 4 Q. And, so, what do you recall
 5 about using the \$50 coupon to promote
 6 Kadian?
 7 MR. DIAMANTATOS: Objection to
 8 form.
 9 A. What was the question, please?
 10 Q. What do you recall about using
 11 the \$50 coupon to promote Kadian?
 12 MS. WELCH: Objection to form.
 13 A. The coupon was actually a --
 14 it's not a rebate. It was a discount
 15 for -- for someone filling a prescription.
 16 So I don't know if it counts as marketing
 17 Kadian. It was consistent with other
 18 people in the space practices that they
 19 were doing to have a patient assistance
 20 program or a co-pay card.
 21 It's also not unique to opioids.
 22 It's pretty common activity or tactic for
 23 branded pharmaceuticals to offer some sort
 24 of patient assistance or discount program

1 MS. WELCH: Objection;
 2 foundation.
 3 MR. DIAMANTATOS: Objection;
 4 foundation.
 5 A. Not necessarily. Medimedia may
 6 have been the, you know, the front end
 7 that created the artwork. I'm not certain
 8 if they had a telephone desk. Or, I don't
 9 believe it was an Actavis employee who was
 10 there. It would have been part of the
 11 support for this specific co-pay card
 12 program.
 13 Q. So you don't know what
 14 organization would have staffed the help
 15 desk that was answering calls in response
 16 to the Kadian coupon?
 17 A. I don't specifically recall.
 18 Q. And, what was the purpose of
 19 offering a \$50 coupon for Kadian?
 20 MS. WELCH: Objection to form.
 21 A. I think I mentioned before it
 22 was a discount to folks from a patient
 23 assistance or a co-pay assistance to
 24 reduce their out-of-pocket costs

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1 potentially on the prescription.

2 Q. And, what was the company's
3 purpose in offering that?

4 A. To be in line with the other
5 promoted pain medications. The
6 competition, my understanding at the time,
7 was also were offering coupons or patient
8 assistance cards.

9 And, again, as I've said
10 previously, this was a very familiar
11 tactic across brand companies as -- as a
12 way to counterbalance the formulary tiers
13 that PBMs and others had put in place for
14 branded products. Still goes on today.

15 Q. So you were trying to keep up
16 with the competitors.

17 Is that right?

18 MR. DIAMANTATOS: Objection to
19 form.

20 A. We were trying to maintain a
21 viable offering in light of the
22 competition.

23 Q. And for this particular coupon,
24 if you look at pages 50 and -- well,

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1 they're all page 50. I guess if you
2 scroll through a little bit, you can see
3 the coupons themselves.

4 Do you see it?

5 A. Which is the coupon?

6 Q. Well, I'm assuming it's this one
7 (indicating).

8 A. This thing (indicating)?

9 That looks like a piece of
10 artwork of like a box or something.

11 Q. You see at the top it says
12 "Kadian co-pay assistance program"?

13 A. Yes.

14 Q. And then it says "Save up to \$50
15 toward each prescription of Kadian"?

16 A. Yes.

17 Q. And then it goes on to state
18 that it's good for up to \$600 for 12
19 months.

20 Is that right?

21 A. That's what it says, yes.

22 Q. So, an individual could use this
23 coupon for a refill of twelve months.

24 Is that right?

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1 MS. WELCH: Objection to form.

2 A. Again, there -- well, again, I
3 don't know if it's one card or multiple
4 cards. There could be, you know, like
5 a -- like a prepaid phone card. I don't
6 know if it's one or twelve.

7 And, again, you don't get
8 refills on controlled substances.
9 Every -- every prescription is a new one.
10 So a patient has to go to the physician to
11 get -- to get a new prescription. There's
12 no refills on controlled substances, is my
13 understanding. Especially on Class II
14 narcotics, which is what Kadian was.

15 Q. But one patient could use this
16 coupon, or a series of coupons, for a
17 twelve-month period.

18 Isn't that right?

19 MS. WELCH: Objection to form.

20 A. Subject to having a valid
21 prescription, or prescriptions, multiple
22 prescriptions.

23 Q. Understood.

24 It says "Good for up to \$600 for

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1 12 months."

2 Do you see that?

3 A. Yes.

4 Q. Was one of the purposes of
5 offering the coupon for six -- sorry.

6 MS. BAIG: Strike that.

7 Q. Was one of the purposes for
8 offering a coupon for twelve months to
9 encourage the long-term use of Kadian?

10 MS. WELCH: Objection to form.

11 A. No.

12 Q. It wasn't to encourage twelve
13 month use, which is what the coupon is
14 offered for?

15 MS. WELCH: Objection to form;
16 misstates the document.

17 A. No.

18 Q. As part of its marketing, did
19 Actavis target high prescribers of certain
20 of its drugs?

21 MS. WELCH: Objection to form.

22 MR. DIAMANTATOS: Objection to
23 form.

24 A. I wouldn't call it part of its

1 marketing. As part of our sales
2 targeting, which again is common for all
3 pharmaceutical companies, you look at who
4 are prescribing, and not just Kadian, but
5 who are prescribing drugs in that class.
6 This is in the pain class. And that's
7 essentially where you would target your
8 sales representatives to call on on a more
9 frequent basis. Although, depending on
10 the size of your sales organization, you
11 could call on all physicians, you could
12 call on a target subset of physicians, you
13 can target on specialty physicians. That
14 is, again, a very -- that is the common
15 practice in the space.

16 Q. Including in the opioid space,
17 correct?

18 MS. WELCH: Objection to form.

19 A. It's the common practice in all
20 the pharmaceutical space, all different
21 therapeutic areas, all different class,
22 specialty sales forces or primary care
23 forces are always -- the practice has been
24 you align your sales force with the

1 physician practices that have the most
2 patients and, therefore, the most
3 prescriptions, potential available
4 prescriptions.

5 Q. And, so, how did Actavis go
6 about targeting high prescribers?

7 MS. WELCH: Objection to form.

8 MR. DIAMANTATOS: Assumes facts.

9 A. Again, Actavis would get the
10 third party data coming from a Wolters
11 Kluwer or IMS. They sell those services
12 to all pharmaceutical companies and with
13 that do the same thing that all other
14 pharmaceutical companies do is you stack
15 rank them. You create what's called
16 deciles, which is in blocks of ten, and
17 subject to the size of your sales force
18 and the geographic dis -- you know,
19 whatever, speed and how many folks you had
20 and the logistics of how many people
21 you're putting in the field would
22 determine how often you can make certain
23 calls. Frequent -- it's called reaching
24 frequency.

1 Again, it's what every branded
2 pharmaceutical company does, not just in
3 pain, but also in cardiovascular, in all
4 the conditions.

5 Q. And, in order to do that,
6 Actavis would use the Wolters Kluwer data,
7 the IMS data, any other data you can think
8 of?

9 A. No. There's probably others,
10 but those are the two that I'm most
11 familiar with.

12 MS. BAIG: Let's have this
13 document marked as Exhibit 9. It's
14 Bates stamped ALLERGAN_MDL_01058383
15 through 58385.

16 (Boothe Exhibit 9, email chain
17 ending March 10, 2009, Bates No.
18 ALLERGAN_MDL_01058383 to 01058385, was
19 marked for identification, as of this
20 date.)

21 MS. BAIG: It starts as an email
22 from you to Terrence Fullem and Kevin
23 Bain.

24 THE WITNESS: Okay. Yeah.

1 BY MS. BAIG:

2 Q. All right. And, you see in the
3 second paragraph you're proposing some
4 sort of initial communication piece to all
5 (or at least the high decile physicians)
6 with a reminder about Kadian and to keep
7 to the brand messages, widest range of
8 dosing options, and PK profile (check the
9 marketing materials.)

10 A. Where is this?

11 Q. Second paragraph.

12 A. Okay. Thank you.

13 Me. Okay. Yeah.

14 Q. Does this refresh your
15 recollection that Actavis was
16 communicating with high decile physicians?

17 A. Well, again, this time frame in
18 March of 2009, I was proposing or
19 suggesting. I'm not -- I don't believe we
20 had our sales -- contract sales force in
21 place. And the context for these notes
22 were we had acquired the asset at the end
23 of 2008. We had no -- we had no field
24 support. Alpharma had pulled everything.

1 We got none of that. And essentially what
2 we were seeing was our scripts were going
3 down in the space, and we were hearing
4 that basically of the other suppliers or
5 provides in the marketplace, including
6 Alpharma and King or Endo or whatever,
7 were basically saying the product had been
8 discontinued. So we -- the belief was we
9 probably need to get some sort of message
10 out there that the product was still
11 available.

12 Q. The message going to physicians,
13 correct?

14 A. In this instance, potentially to
15 a targeted number of physicians. This,
16 again, this is just a proposal. This is
17 not a actual activity. We did put
18 activities in place. This is just sort
19 of, I guess, the beginning of that
20 discussion.

21 Q. And you don't recall whether
22 this was implemented or not?

23 A. Again, there's nothing to
24 implement here. It just says I would

1 propose some sort of communication.

2 If we went and put a
3 communication piece out at some point down
4 the road, it would have gone through an
5 internal review. It would have gone
6 through -- would have been provided to
7 DDMAC. We would have had the activities
8 and I think we -- I know we ended up doing
9 that. I don't know if the message that
10 went out had anything to do with high
11 decile physicians or if it talked about
12 brand messaging or whatever. This was,
13 again, very -- the initiation of
14 activities to start putting together a
15 direct promotion capability, which we did
16 not have at the time at Actavis.

17 Q. But anything that had -- that
18 went out to high decile physicians or any
19 physicians would have gone to DDMAC for
20 review first?

21 A. Again, the -- the process -- any
22 communication to a physician would have to
23 be on label and would have to be through a
24 regulatory review, a legal review

1 potentially, some sort of internal review,
2 and then it would go -- it would be
3 submitted to DDMAC, which is the FDA group
4 that any sort of deemed promotional
5 material you would send to in the normal
6 course of business. So yes.

7 Q. And, do you see the next
8 sentence you state: For sake of time, we
9 should not try to create any new copy as
10 that will require internal and DDMAC
11 review.

12 Do you see that?

13 A. Yes.

14 Q. So, were you using materials
15 that had come from Alpharma?

16 A. Again, in this specific email,
17 this is just a proposal. So I -- at some
18 point, I believe we did utilize or
19 repurpose the materials that Alpharma had
20 used in the past. We -- we got that as
21 part of the -- the material with no
22 information about them and then we -- we
23 may or may not have used some of that
24 material that Alpharma had been using in

1 the past. I don't know if they used it
2 for years.

3 And, again, but even that, and
4 like the thing you had before where you
5 see the Alpharma -- or, Actavis is put on
6 it. Any time you make any adjustment to a
7 piece of material, you do submit it to
8 DDMAC. So we wouldn't have just send
9 stuff -- well, I don't know to speak for
10 that.

11 But, yes, we would do -- any
12 time you do something new, of course it
13 requires more iteration. So if you took
14 something that existed before that had
15 been in the field for quite some time, my
16 belief would have been it would be much
17 more -- it would have been faster to
18 implement. That doesn't mean that's what
19 we did. So, this is just an email about
20 ideas.

21 Q. So you don't recall whether it
22 was implemented or not?

23 MS. WELCH: Objection to form.

24 A. I believe we did something. I'm

1 not certain what we did was what I had
2 proposed in this.

3 Again, by the way, it wasn't --
4 at the end of the day, it wasn't really my
5 decision. It would be Terry's and the
6 brand team to come up with the best
7 recommendation for how to message to the
8 physician community.

9 Q. Sure.

10 But Terry reports to you. So
11 ultimately you have to approve it.

12 Isn't that right?

13 MS. WELCH: Objection to form.

14 A. I wouldn't necessarily have to
15 approve a letter to physicians.

16 Again, and, by the way, I'm not
17 the reviewer on that. Again, it would be
18 our PRC or whatever you'd call it,
19 promotional review committee. There's
20 different acronyms for it.

21 Actually, I would not be
22 reviewing and improving. I might be
23 signing off on the invoice subject to the
24 expense level, but the content, I'm not a

1 subject matter expert. We have people in
2 regulatory and the marketing teams and
3 third parties and legal who actually are
4 the subject matter experts and they're the
5 ones who determine what does or doesn't
6 get presented to -- to, in this instance
7 on brand products, to physicians.

8 None of our generic stuff goes
9 to physicians. It's targeted more to
10 the -- the channel, the wholesalers or
11 pharmacists to be aware that our product
12 is available. They should ask for it.

13 Q. And, so, it goes on to state: I
14 believe there are approximately 20,000 key
15 prescribers. So if you figure 10 to \$20
16 per item, it should be under 500,000.

17 Correct?

18 A. That's what it says.

19 Q. And, how would a prescriber
20 be -- which prescribers are key
21 prescribers?

22 A. It could potentially be
23 practices that prescribe a lot of pain
24 medications or it could be practices that

1 have prescribed historically a lot of
2 Kadian, which again go back to the third
3 party data from Wolters Kluwer or from
4 IMS.

5 And, you know, again, in this
6 document, I am providing my perspective,
7 but it's not fact-based, I mean.

8 Q. And the purpose of that was to
9 increase scripts, correct?

10 A. The purpose, based on these
11 emails, is we were not -- we were seeing a
12 decline in our -- in our Kadian scripts
13 from the time we had acquired the asset
14 because we did not -- we had no share of
15 voice. We had no participation in -- in
16 the market. So, the other folks who were
17 also in the same space were telling
18 physicians, telling wholesalers that our
19 product was discontinued, it was no longer
20 available. So, we -- we believed it made
21 sense to find some way to remind, to
22 announce, to let physicians know that our
23 product was still available, that Kadian,
24 which, by the way, served a, you know, an

1 FDA-approved medication, sort of a
2 specific medical need and a product that
3 had been prescribed quite often for quite
4 a long time.

5 Q. And the purpose was to increase
6 the number of scripts, correct?

7 A. The purpose here, again in
8 March -- in March of 2009, was to try to
9 slow down the rate at which the scripts
10 for Kadian were declining. We had full
11 expectation that the scripts for Kadian
12 were going to decline over time. We had
13 no sales organization. Alpharma had a
14 sales organization of maybe 400 people who
15 were out there actively detailing this
16 product of their class of products. Our
17 understanding was Endo had about 600 sales
18 representatives. And, as you're
19 well-aware, we ended up putting a small
20 contract sales organization of about 18,
21 initially 18 sales representative in the
22 field. So 18 against 400 or 600. We had
23 no aspirations that we were going to
24 increase the scripts. We were trying to

<p style="text-align: right;">Page 177</p> <p>1 slow down the rate in which prescriptions 2 stopped. And, in fact, we had third 3 parties who had come and provided us 4 presentations that potentially had all 5 sorts of different curves for if we did no 6 promotion or certain levels of promotion, 7 what would it -- what it might mean for 8 scripts for this product. 9 Q. And, do you see the next 10 sentence states: On a strategic front, I 11 would propose that we find a detail 12 partner for a number two slot with script 13 gain incentive program? 14 A. Yes. 15 Q. And, so, who was the detail 16 partner, if anyone, that you used for -- 17 for this script gain incentive program? 18 A. We didn't. 19 Q. You recall that you didn't find 20 anybody? 21 A. No. Again, I -- again, this 22 whole email that I wrote to Terry and to 23 Kevin was basically some ideas as to maybe 24 things we should look at to try to slow</p>	<p style="text-align: right;">Page 178</p> <p>1 down the rate at which the Kadian 2 prescriptions were declining. 3 Q. Did you find a partner to do 4 that? 5 A. You didn't let me finish my 6 answer. 7 Q. Go ahead. 8 A. We opted to -- to not do that. 9 We -- you know, and the idea of a second 10 slot is you find someone who's out in the 11 space and you basically offer them the 12 ability to detail your product and you pay 13 them some sort of commission or some sort 14 of incentive. We did not go down that 15 path. So, again, these are ideas that 16 were being floated. 17 We decided, as I mentioned, we 18 decided to engage in 18 -- a third party 19 called inVentiv, and we engaged initially 20 with 18 sales representatives who would be 21 dedicated exclusively on Kadian. 22 Q. So inVentiv was the detail 23 partner? 24 A. Again, in this email, what I</p>
<p style="text-align: right;">Page 179</p> <p>1 meant by detail partner, that would have 2 been another branded pharmaceutical 3 company. 4 Q. I see. 5 A. We opted not to partner. 6 We opted to basically contract 7 for our own. And that's what CSO stands 8 for is contract sales organization. 9 InVentiv was a contract sales 10 organization. 11 Q. I see. 12 A. After the work we had done in 13 the analysis, we decided that that was a 14 better path forward. 15 Q. If you move a little further 16 down in the email from Terrence Fullem to 17 you and Kevin Bain. 18 A. Yep. 19 Q. Halfway through the first 20 paragraph he states: There are various 21 telemarketing outfits available and one of 22 the points we will have to make a judgment 23 call on is whether we want physician based 24 telemarketing such as Triple i provides or</p>	<p style="text-align: right;">Page 180</p> <p>1 really good sales type telemarketers. 2 Do you see that? 3 A. Yeah. Yes. 4 Q. Does this refresh your 5 recollection that telemarketing was at 6 least considered? 7 MS. WELCH: Objection to form. 8 A. I believe the earlier questions 9 you were asking about telemarketing 10 related to generic products. This is not 11 a generic. This is a brand item. 12 So yes, telemarketing was -- is 13 one of the multiple techniques that 14 branded pharmaceutical companies do. And 15 the reason you do telemarketing, as I 16 described with the deciling is, at some 17 point, your sales force can only 18 effectively call on a certain number of 19 doctors and your sales force is more 20 expensive and you basically use a 21 telemarketing to potentially cover 22 additional doctors. It's less effective. 23 It's -- and basically you're sort of 24 balancing the investment in promotion with</p>

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1 the potential benefit from the customer,
 2 from the physicians.
 3 MS. BAIG: We'll have this
 4 document marked as Exhibit 10. It's
 5 Bates stamped ALLERGAN_MDL_01725566
 6 through 5569. It's from you to
 7 Natalie Leitch, Kevin Bain and
 8 Terrence Fullem and others dated March
 9 11th, 2009.
 10 (Boothe Exhibit 10, email dated
 11 March 11, 2009, Bates No.
 12 ALLERGAN_MDL_01725566 to 01725569, was
 13 marked for identification, as of this
 14 date.)
 15 THE WITNESS: Okay.
 16 BY MS. BAIG:
 17 Q. It appears to be an email string
 18 addressing the \$50 co-pay coupon that we
 19 already discussed.
 20 Correct?
 21 A. Yes.
 22 Q. And, in the first line it
 23 references a mass distribution to up to
 24 9,000 physicians.

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1 generating 70 percent of the scripts, a
 2 lot of the scripts, right?
 3 A. Yes. And it -- I went on and
 4 based on whatever data someone had shared
 5 with me or 50 -- half the scripts were
 6 under 2,000 physicians.
 7 So, looking at the cost benefit
 8 potentially, this program could be even
 9 2,000 prescription -- physicians. It
 10 could be 1,000 physicians. It could be 20
 11 physicians. It really depends on
 12 potentially what the --
 13 Q. How many scripts they're
 14 writing?
 15 A. Potentially.
 16 Q. If you look at the second page.
 17 A. Yep.
 18 Q. It talks about the Triple i
 19 agreement, and under "Overview" it
 20 discusses objectives in the first bullet.
 21 Do you see that?
 22 A. Yes.
 23 Q. And it states as an objective:
 24 To increase new therapy starts and script

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1 Do you see that?
 2 A. Yes.
 3 Q. And those would be the 9,000
 4 physicians that were targeted high decile
 5 physicians from the Wolters Kluwer or IMS
 6 data that we discussed?
 7 MS. WELCH: Objection to form.
 8 MR. DIAMANTATOS: Foundation.
 9 A. That's not how I read it.
 10 Q. How do you read it?
 11 A. Again, my email says: My only
 12 reservation is with the number up to 9,000
 13 and 250,000 cards.
 14 The next thing it says: The
 15 physician segmentation at less than 4,000
 16 physicians generates 70 percent of the
 17 scripts.
 18 So, for my comment before about
 19 deciling, I am suggesting that this
 20 program is bigger than it needs to be.
 21 Doesn't need to be 9,000 physicians, based
 22 on the deciling, and then there's more to
 23 it.
 24 Q. Because the 4,000 physicians are

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1 volume.
 2 Do you see that?
 3 A. Yes.
 4 Q. And to increase average length
 5 of therapy persistence.
 6 Do you see that?
 7 A. Yes.
 8 Q. Does this refresh your
 9 recollection that one of the purposes of
 10 the coupon program was to increase the
 11 duration, the average length of therapy
 12 persistence?
 13 A. No.
 14 Q. Why not?
 15 A. Well, again, you're -- you're
 16 reading me back the proposal from third
 17 party Triple i. That doesn't mean we did
 18 this or we used it.
 19 Q. This email is from Natalie
 20 Leitch, correct?
 21 A. Yes.
 22 Q. So this is her understanding of
 23 what the objectives were.
 24 Is that right?

1 A. She could have cut and pasted
2 that from a Triple i presentation. I
3 don't know for certain.

4 Q. So, do you think Triple i's
5 objectives in issuing the coupon that you
6 hired it to issue were different from your
7 objectives?

8 MS. WELCH: Objection to form.

9 BY MS. BAIG:

10 Q. From Actavis's objectives?

11 MS. WELCH: Same objection.

12 A. Again, I'm not certain at the
13 time this email is written if we
14 actually -- I don't think we had a coupon
15 program. I think this is related to
16 experience that Triple i had shared with
17 us when they were doing the co-pay program
18 for Alpharma, or maybe with Dendrite was
19 another sort of.

20 Q. Okay. Well, we see in the first
21 sentence: The Triple i agreement is
22 undergoing one last internal review.

23 Is it your understanding that
24 that is a Triple i agreement with Actavis?

1 A. Yes.

2 Q. And then where she goes on to
3 state objectives and then after that she
4 states: 9,000 physicians targeted.

5 Do you see that?

6 A. That's what she wrote.

7 And, like I said, on the first
8 page, I didn't think that was the right
9 number. So this isn't the final -- this
10 isn't the final agreement or the final
11 document.

12 Q. And it goes on to state that:
13 Each physician in the targeted file will
14 receive call from a customer service rep
15 at Triple i to communicate acquisition of
16 Kadian by Actavis and launch of new card
17 program.

18 Do you see that?

19 A. Yes.

20 Q. And the new card program, is
21 that the \$50 coupon program for twelve
22 months?

23 A. I believe so, but I'm not
24 certain.

1 Q. And it states: Calls were
2 initiated today.

3 Do you see that?

4 A. Yes.

5 Q. Does that suggest to you that it
6 was underway at this time?

7 A. Yes.

8 Q. And it goes on to state that:
9 43,000 pharmacies would receive an email
10 introducing the new program.

11 Correct?

12 A. Yes.

13 Q. And the emails would be sent
14 March 16th, 2009, which is two days after
15 this email.

16 Correct?

17 A. Five days after the email, but
18 yes. March 11th is the email.

19 Q. Thank you.

20 It goes on to state that:
21 270,000 cards to be distributed to
22 physicians' offices in three separate
23 mailings.

24 Do you see that?

1 A. Again, this is what it says.

2 I'm not certain this is what we did
3 'cause, as I note on the earlier chart, I
4 didn't agree, or I had some reservation,
5 as I said, with the number of physicians
6 and the number of cards. We may have done
7 a much smaller program. We may have done
8 a bigger program. I don't know exactly
9 what we ended up doing.

10 Q. Sure.

11 It says in the first sentence
12 that this is one last internal review.
13 Right?

14 A. That's what the email says.
15 That doesn't mean that there weren't more
16 internal reviews after the, quote, one
17 last internal review.

18 And, look at the bullet point,
19 it says cards can be used up to twice per
20 month and max at 12 uses. I don't think
21 that's the program that we put in place
22 because it was once per month is what --
23 or, one new prescription.

24 So, again, there were definitely

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1 changes to what was ultimately put in
 2 place which is what this email is
 3 suggesting. It could have been the
 4 number; it could have been the amount; it
 5 could have been the duration. It could
 6 have been all those things.
 7 Q. Do you recall what the changes
 8 were?
 9 A. No.
 10 Q. The next bullet says: Patients
 11 can also request a card directly from
 12 Triple i by calling their customer service
 13 line or by completing/submitting a
 14 registration form available on the Kadian
 15 website.
 16 Do you see that?
 17 A. Yes.
 18 Q. And then there's a note about
 19 cards being able to be used up to two
 20 times per month up to a max of twelve uses
 21 and that the cards expire December 31st,
 22 2009.
 23 Correct?
 24 A. Yes.

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1 Natalie Leitch, starts from Natalie
 2 Leitch to Jennifer Altier.
 3 (Boothe Exhibit 11, email chain
 4 ending August 26, 2011, Bates No.
 5 ACTAVIS0965151 to 0965154, was marked
 6 for identification, as of this date.)
 7 BY MS. BAIG:
 8 Q. It appears to be discussing
 9 generic MS writers.
 10 Do you see that?
 11 A. MS writers?
 12 Q. I'm looking at the second page,
 13 second paragraph: Our focus once again is
 14 on the high volume generic MS writers. We
 15 now --
 16 A. Where is this?
 17 Q. Second paragraph, second page:
 18 We now need to understand the MC coverage
 19 in these new territories to make certain
 20 Kadian is not disadvantaged. The goal is
 21 to have folks in the field, assuming we
 22 don't uncover problems relating to MC
 23 before the end of September.
 24 A. Okay.

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1 Q. And the Triple i total program
 2 expenses estimated cost was 2.5 million?
 3 A. Yes. Based on that proposal. I
 4 don't believe that that's what we ended up
 5 doing.
 6 Q. But you don't recall how it
 7 changed, correct?
 8 A. No.
 9 Q. If at all.
 10 (Pause.)
 11 MS. WELCH: Aelish?
 12 MS. BAIG: Aelish (different
 13 pronunciation).
 14 MS. WELCH: Aelish. Sorry.
 15 Maybe ten more minutes and then
 16 a lunch break?
 17 MS. BAIG: Sure. Whenever you
 18 like lunch is fine. We can go now, if
 19 you want.
 20 THE WITNESS: No, I'm okay.
 21 MS. BAIG: Okay.
 22 So, this document is marked as
 23 Exhibit 11. It's Bates stamped
 24 ACTAVIS965151 through '513, from

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1 Q. What's your understanding of
 2 what's meant here by generic MS writers?
 3 What is MS?
 4 MR. DIAMANTATOS: Objection to
 5 form; foundation.
 6 A. I'd be guessing. I don't know.
 7 Q. You don't have any understanding
 8 what MS is?
 9 MS. WELCH: Objection to form.
 10 BY MS. BAIG:
 11 Q. In this context?
 12 MR. DIAMANTATOS: And
 13 foundation.
 14 A. I thought it would be multiple
 15 sclerosis, but I don't think that's it.
 16 So no.
 17 Q. In the next paragraph it says:
 18 We are pushing hard on the MC front.
 19 Do you know what that is?
 20 MR. DIAMANTATOS: Objection to
 21 form; foundation.
 22 A. I would take that as managed
 23 care.
 24 Q. And a little further down it's

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1 an email from you to Natalie Leitch noting
 2 that you're losing momentum with respect
 3 to Kadian.
 4 Is that right?
 5 A. That's what the email says: We
 6 are losing -- we are certainly losing our
 7 momentum here.
 8 Q. And you're talking about Kadian
 9 sales?
 10 A. Doesn't explicitly say that.
 11 Again, yeah, so I don't know. More than
 12 likely, but I don't know.
 13 Q. Do you recall there being a loss
 14 in momentum in Kadian sales at around this
 15 time?
 16 A. You'd have to show me some
 17 documents.
 18 I don't specifically recall.
 19 Q. Do you see at the bottom of the
 20 first page in the email from Natalie
 21 Leitch to you it states: Here's rundown
 22 of where we're at and what's planned. The
 23 team's objective coming out of the NSM was
 24 to maintain target - does TRX mean

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1 prescriptions?
 2 A. TRX I believe means total
 3 prescriptions, yes.
 4 Q. Target total prescriptions at
 5 the post Embeda recall level. This meant
 6 targets needed to write an average of
 7 1,306 Kadian prescriptions per day for the
 8 four months ending August. So far the
 9 team has managed to do this but only just.
 10 They're trending at 1,301 per day.
 11 Do you see that?
 12 A. Yes.
 13 Q. Okay. And, so, was this a
 14 target of 1,306 Kadian prescriptions per
 15 day? What was this target?
 16 MR. DIAMANTATOS: Objection to
 17 form; foundation; assumes facts.
 18 A. I'm just reading the same thing
 19 you're reading.
 20 I'm not -- I'm not sure. You'd
 21 have it ask Nathalie, I guess.
 22 Q. You have no understanding of
 23 what she meant by this?
 24 MR. DIAMANTATOS: Objection.

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1 MS. WELCH: Objection to form.
 2 MR. DIAMANTATOS: Asked and
 3 answered.
 4 BY MS. BAIG:
 5 Q. As you read it?
 6 A. No.
 7 Q. Do you have any understanding of
 8 who the targets were?
 9 MR. DIAMANTATOS: Objection to
 10 form.
 11 A. Not specifically, no.
 12 Q. But they would have been
 13 prescribers, correct?
 14 A. The sales force would be calling
 15 on physicians. Yes, it be would
 16 potential -- potential prescribers.
 17 Q. And, so, the hope was that each
 18 potential prescriber would write an
 19 average of 1,306 Kadian prescriptions per
 20 day?
 21 MR. DIAMANTATOS: Objection.
 22 MS. WELCH: Objection;
 23 foundation.
 24 MR. DIAMANTATOS: Assumes facts.

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1 A. I'm not sure. That could be
 2 all, the total pool. I'm not sure it's an
 3 individual or all the --
 4 Q. The pool, yes. The pool of
 5 targets.
 6 Well, I don't know. Do you
 7 know?
 8 MR. DIAMANTATOS: Same
 9 objections.
 10 A. I don't know either, no.
 11 Q. Okay. Seems like a pretty high
 12 target for an individual prescriber.
 13 Wouldn't you agree?
 14 MR. DIAMANTATOS: Objection to
 15 form; argumentative.
 16 MS. WELCH: Objection to form;
 17 foundation.
 18 A. I have no basis for that.
 19 Q. 1,306 prescriptions per day?
 20 MS. WELCH: Same objections.
 21 BY MS. BAIG:
 22 Q. Would you agree that that would
 23 be awfully high for an individual
 24 prescriber?

1 MR. DIAMANTATOS: Same
 2 objections.
 3 MS. WELCH: Objection to form;
 4 foundation.
 5 A. I have no basis to say one way
 6 or the other.
 7 Q. Whether 1,306 Kadian
 8 prescriptions per day would be awfully
 9 high for an individual prescriber?
 10 MS. WELCH: Objection to form;
 11 foundation.
 12 MR. DIAMANTATOS: Asked and
 13 answered; argumentative.
 14 BY MS. BAIG:
 15 Q. You don't know?
 16 A. No, don't know.
 17 Q. Do you see on the -- at the top
 18 of the second page it states: We added
 19 new high volume generic MS writers to each
 20 of the territories at the end of July.
 21 The response from these writers to our
 22 message has been positive so far. We're
 23 looking to this segment to drive growth
 24 over the coming months.

1 promotion of Kadian?
 2 A. I don't know.
 3 Q. You don't recall learning that?
 4 A. I think that's why I asked the
 5 question had we. I was asking Nathalie,
 6 this is something the team was
 7 considering. I don't know if they did or
 8 didn't or if they were or they weren't.
 9 Q. Okay. Do you recall whether or
 10 not Actavis used speakers forums to
 11 promote Kadian at any time?
 12 A. I don't believe we ever did.
 13 Q. Okay. Do you recall any
 14 discussions about that?
 15 A. There may have been discussions
 16 I may or may not have been part of. But,
 17 again, at the end of the day, I don't
 18 believe we ever did speakers forums for
 19 this product.
 20 I mean, we had a very finite
 21 period of time from when we acquired the
 22 asset to when we expected the generic
 23 market to form. It's about six quarters.
 24 So I -- we never were significantly

1 Do you see that?
 2 A. Yes.
 3 Q. And then a little further down
 4 there's a question from you: What can we
 5 do to reestablish our script level over
 6 26,000 per week?
 7 A. Yes.
 8 Q. And that was Kadian scripts?
 9 A. It's not clear, but I think
 10 that's a yes. But it could be Kadian and,
 11 by the way, generic Kadian. I believe in
 12 the August of 2011 time frame, there was
 13 generic Kadian and our authorized generic.
 14 So it's potential or probable it was both
 15 combined, both branded Kadian and the
 16 generic Kadian if, at that time, the
 17 generic Kadian was available.
 18 Q. Okay. And a little further down
 19 you write: Have we scratched any ideas
 20 around speakers forums?
 21 Do you see that?
 22 A. Yes.
 23 Q. And, had you scratched any ideas
 24 around speakers forum at that time for the

1 invested. That's why we used a contract
 2 sales organization. We tried to, again,
 3 slow down the rate at which prescriptions
 4 were declining. That was our plan.
 5 Q. The contract sales organization
 6 inVentiv?
 7 A. Correct.
 8 Q. And, do you recall using
 9 speakers forums for other opioid products?
 10 MS. WELCH: Objection to form.
 11 A. We didn't -- I don't think we
 12 ever -- well, we had plans to potentially
 13 do some sort of speaker forum on the
 14 Moxduo product, but that never got
 15 approved by the FDA. So the programs
 16 never went into -- into place. We had
 17 done prelaunch planning on that. And
 18 those are the only two items, both the
 19 Kadian brand and the potential Moxduo,
 20 which would have been in promotional
 21 activities of Actavis. Moxduo was never
 22 approved, and I don't believe we ever did
 23 speaker forums on Kadian.
 24 MS. BAIG: Okay. Good time to

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<p>1 take lunch.</p> <p>2 MS. WELCH: Okay.</p> <p>3 MS. BAIG: How much time would</p> <p>4 you like?</p> <p>5 MS. WELCH: 45 minutes.</p> <p>6 MS. BAIG: Sure.</p> <p>7 THE VIDEOGRAPHER: We're going</p> <p>8 off the record.</p> <p>9 The time is 12:29 p.m.</p> <p>10 (Luncheon recess taken.)</p> <p>11 - - -</p> <p>12 AFTERNOON SESSION</p> <p>13 - - -</p> <p>14 THE VIDEOGRAPHER: We're going</p> <p>15 back on the record.</p> <p>16 The time is 1:17 p.m.</p> <p>17 MS. BAIG: So, we'll have this</p> <p>18 document marked as the next exhibit,</p> <p>19 please.</p> <p>20 It's Bates stamped</p> <p>21 ACTAVIS1025294 through '297. It</p> <p>22 starts as an email from Jennifer</p> <p>23 Altier to Erin Faucette and Liz Reese</p> <p>24 at an organization named Technekes.</p>	<p>1 (Boothe Exhibit 12, email chain</p> <p>2 ending February 20, 2013, with</p> <p>3 attachment, Bates No. ACTAVIS1025294</p> <p>4 to 1025297, was marked for</p> <p>5 identification, as of this date.)</p> <p>6 BY MS. BAIG:</p> <p>7 Q. Do you recall an organization</p> <p>8 named Technekes?</p> <p>9 A. No.</p> <p>10 Q. You haven't heard of them?</p> <p>11 A. Nope.</p> <p>12 Q. Okay. It appears this is an</p> <p>13 email string about Kadian. Starts off:</p> <p>14 Erin and Liz. Please find attached the</p> <p>15 updated list of Kadian field targets to</p> <p>16 now be called on by Technekes.</p> <p>17 A. So, this document is dated 2013.</p> <p>18 Q. Correct.</p> <p>19 A. I was no longer with the company</p> <p>20 at this time.</p> <p>21 Q. Aha.</p> <p>22 What -- this is February 20th,</p> <p>23 2013, and you left at the end of 2012.</p> <p>24 Is that right?</p>
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<p>1 A. Correct.</p> <p>2 Q. Okay. If you'd just take a look</p> <p>3 at the second page of the document.</p> <p>4 Did you ever see a document like</p> <p>5 this when you were at Actavis? It appears</p> <p>6 to be a list generated perhaps by one of</p> <p>7 the data organizations that you've talked</p> <p>8 to -- talked about earlier generating a</p> <p>9 list of physicians.</p> <p>10 (Pause.)</p> <p>11 A. What's the question, sorry?</p> <p>12 Q. Have you ever seen a document</p> <p>13 like this attachment here starting on the</p> <p>14 second page?</p> <p>15 MR. DIAMANTATOS: Objection to</p> <p>16 form.</p> <p>17 A. Not that I can recall.</p> <p>18 Q. Okay. And my read of this email</p> <p>19 is that this is a document that has been</p> <p>20 identified -- that is identifying high</p> <p>21 prescribers that is being used to generate</p> <p>22 Kadian field targets to be called on by</p> <p>23 Technekes.</p> <p>24 Does this appear to be a type of</p>	<p>1 document that would be generated from IMS?</p> <p>2 MS. WELCH: Objection to form;</p> <p>3 foundation; speculation.</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. So, I believe you</p> <p>6 testified earlier that Actavis was using</p> <p>7 Kadian sales rep to detail opioids to</p> <p>8 doctors, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And -- and that those sales reps</p> <p>11 came from inVentiv?</p> <p>12 A. Yes.</p> <p>13 Q. And, who trained the inVentiv</p> <p>14 sales reps?</p> <p>15 MS. WELCH: Objection;</p> <p>16 foundation.</p> <p>17 A. There was --</p> <p>18 Q. Well, if anyone trained them,</p> <p>19 who trained them?</p> <p>20 A. They were inVentiv --</p> <p>21 MS. WELCH: Objection.</p> <p>22 Objection to form; argumentative;</p> <p>23 foundation.</p> <p>24 Go ahead.</p>

1 A. So, again, the -- the decision
2 to utilize inVentiv was that they were a
3 professional contract sales organization
4 who had infrastructure, had compliance,
5 had training, had car service, had expense
6 reimbursement, had Sunshine Act, and then
7 they would source experienced professional
8 pharmaceutical sales reps, and we would
9 provide content. Again, in the instance
10 of Kadian, it was the label information.
11 And then they would, again, be in the
12 field.

13 So, I -- the answer to your
14 question is some of the materials came
15 from Actavis and some of the materials
16 were -- were reviewed and agreed to with
17 inVentiv. So a combination of both.

18 Q. Okay. And, who at Actavis would
19 have had involvement with training
20 inVentiv employees?

21 A. Well, again, you -- I believe
22 that inVentiv trained their employees, but
23 again, that Actavis personnel were
24 involved in the materials and the content

1 done outside the initial training, it
2 was -- it was overseen with appropriate
3 qualified Actavis personnel.

4 Q. Okay. And, do you know who --
5 which people from Actavis would have been
6 involved in that?

7 A. Again, you'd have to ask me, you
8 know, a specific event or a specific
9 meeting.

10 I -- like I say, it would be
11 someone from our regulatory organization,
12 someone from our legal organization,
13 someone from our branded side sales
14 organization, and compliance.

15 Q. Okay. But you can't tell me any
16 names of any people at this point.

17 Is that right?

18 MS. WELCH: Objection to form.

19 BY MS. BAIG:

20 Q. That would have been involved --

21 A. That's not what I said. I just
22 said if you gave me a specific meeting or
23 instance, I could probably look at the
24 materials, let you know who -- which who

1 and the oversight and that would be the
2 marketing team. It would be the
3 compliance team. It would be regulatory,
4 and, again, our compliance officer and it
5 would be legal.

6 Q. So, all of those teams would
7 have been involved in preparing materials.

8 Is that what you're saying?
9 That could have been used by the sales
10 reps?

11 MS. WELCH: Objection to form.

12 A. Potentially.

13 Q. Okay. But which teams would be
14 involved with in-person training of sales
15 reps, if any?

16 A. Again, all those four. I mean,
17 my recollection is that, in addition to
18 the initial training, there would be
19 regular sales meetings or things that
20 pharma companies call them POAs or RSMs.
21 In all those meetings, there would always
22 be a regulatory person, a legal person, a
23 compliance person involved.

24 So, if there was any training

1 were in attendance were from which of the
2 different organizations.

3 Q. Okay. Right.

4 But without a document in front
5 of you, you cannot tell me any names of
6 any people that would have been in
7 training the inVentiv sales -- salespeople
8 face-to-face?

9 MS. WELCH: Objection to form.

10 BY MS. BAIG:

11 Q. Correct?

12 A. Again, subject to the specific
13 time and place. I mean, again --

14 Q. I'm just -- I'm not talking
15 about a specific meeting. I'm talking
16 about generally training the inVentiv
17 sales force.

18 Who at the company would have
19 done that?

20 And you've given me a number of
21 departments a few times. I'm just
22 wondering if you know which individuals
23 from any of those departments would have
24 actually had the responsibility for doing

<p style="text-align: right;">Page 209</p> <p>1 that.</p> <p>2 A. Like I say, I know who the</p> <p>3 people were in the specific groups and</p> <p>4 subject to the time, I could confirm.</p> <p>5 You're asking me to provide specifics, and</p> <p>6 absent a specific instance, I'm less</p> <p>7 familiar with the specifics.</p> <p>8 I know who ran the regulatory</p> <p>9 group. I know who ran the legal group. I</p> <p>10 know who was the sales marketing people.</p> <p>11 You obviously mentioned Ms. Leitch, so she</p> <p>12 would have been involved.</p> <p>13 Q. Would Ms. Altiers -- Altier have</p> <p>14 been involved as well?</p> <p>15 A. She may or may not be. Like I</p> <p>16 say, she wasn't an employee. She -- I</p> <p>17 believe we brought her in to Actavis in</p> <p>18 2011 or 2012. I -- so, at some point, she</p> <p>19 would have been involved, but I don't</p> <p>20 believe initially.</p> <p>21 And you didn't provide a</p> <p>22 specific time or instance. So in 2009,</p> <p>23 Miss Altier was not involved.</p> <p>24 Q. You wouldn't have had any</p>	<p style="text-align: right;">Page 210</p> <p>1 involvement in training Kadian sales reps,</p> <p>2 right?</p> <p>3 A. Absolutely not.</p> <p>4 Q. And you wouldn't have had any</p> <p>5 involvement in reviewing materials which</p> <p>6 were presented to Kadian sales reps, or</p> <p>7 would you?</p> <p>8 MS. WELCH: Objection to form.</p> <p>9 A. I may have seen them, but I</p> <p>10 wouldn't have been involved in reviewing</p> <p>11 them or definitely not involved in</p> <p>12 approving them.</p> <p>13 And, again, I -- well, go ahead.</p> <p>14 Q. Were you aware that the Kadian</p> <p>15 marketing department was using Alpharma</p> <p>16 marketing materials?</p> <p>17 MR. DIAMANTATOS: Objection;</p> <p>18 form; assumes facts.</p> <p>19 A. When we first acquired the</p> <p>20 asset, we did utilize -- when we decided</p> <p>21 to go with some materials into the</p> <p>22 physicians, we did utilize or repurpose</p> <p>23 the existing Alpharma materials that had</p> <p>24 been, to our understanding, had been in</p>
<p style="text-align: right;">Page 211</p> <p>1 the field for quite some time, had been,</p> <p>2 you know, through a promotional review,</p> <p>3 had been through Alpharma's legal,</p> <p>4 regulatory, compliance departments and had</p> <p>5 been submitted to DDMAC. And then when we</p> <p>6 repurposed those things, and I believe we</p> <p>7 added the Actavis logo because we had a</p> <p>8 limited period of time to utilize the</p> <p>9 Alpharma trade dress. We also then</p> <p>10 submitted the revised logo, none of the</p> <p>11 content changed, to the best of my</p> <p>12 knowledge, also to DDMAC.</p> <p>13 Q. And, at some point, was Actavis</p> <p>14 required to change its marketing materials</p> <p>15 for Kadian?</p> <p>16 MS. WELCH: Objection to form.</p> <p>17 A. There was a -- there was a time</p> <p>18 when Actavis received a warning letter</p> <p>19 based on the materials that had come from</p> <p>20 Alpharma, and we responded to that warning</p> <p>21 letter that we modified -- we modified the</p> <p>22 materials, but your question was were we</p> <p>23 required. We weren't required. We made</p> <p>24 the decision to comply with the request</p>	<p style="text-align: right;">Page 212</p> <p>1 from the FDA.</p> <p>2 MS. BAIG: All right. Let's</p> <p>3 have this document marked -- marked as</p> <p>4 the next exhibit. It's Bates stamped</p> <p>5 ALLERGAN_MDL_00026060 through '092.</p> <p>6 It starts as an email from Jennifer</p> <p>7 Altier to Tom Johnson.</p> <p>8 So, this is Exhibit Number 13.</p> <p>9 (Boothe Exhibit 13, email dated</p> <p>10 August 2, 2012, with attachment, Bates</p> <p>11 No. ALLERGAN_MDL_00026060 to 00026092,</p> <p>12 was marked for identification, as of</p> <p>13 this date.)</p> <p>14 BY MS. BAIG:</p> <p>15 Q. The subject is "Slides for</p> <p>16 today's conference call." The attachments</p> <p>17 noted are "Kadian detail aid suggestions</p> <p>18 revised, Kadian detail pieces and</p> <p>19 comments."</p> <p>20 And, if you flip through, you</p> <p>21 can see it starts Kadian detail at --</p> <p>22 sorry. Kadian detail aid expansion August</p> <p>23 2nd, 2012. Ivan T. Shaw's name is on it.</p> <p>24 Do you know who Ivan Shaw is?</p>

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1 A. I'm still reviewing the
2 document.
3 (Perusing document.)
4 Two different documents here.
5 Q. Well, there's two attachments
6 noted. If you -- if you look at the
7 subject line and the attachments indicated
8 on the first page.
9 A. Okay. Yeah.
10 Q. All right. Who's Ivan Shaw; do
11 you know?
12 A. I have no idea.
13 Q. Okay. What's your understanding
14 of what this document is?
15 MS. WELCH: Objection to form.
16 A. This is the first time I've seen
17 it, so.
18 It says Kadian detail aid
19 expansion.
20 Q. What is a detail aid expansion?
21 MS. WELCH: Objection to form;
22 foundation.
23 A. A detail aid would be something
24 that the -- the branded marketing or sales

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1 team in conjunction with regulatory,
2 compliance and legal would develop, again
3 submit it to DDMAC, and once it was
4 determined to be able to share with the
5 sales organization, would be provided to
6 the sales organization as a content piece
7 to aid them in discussions with
8 physicians.
9 Q. Do you know whether this -- if
10 you flip through to the next page after
11 the first page of the Power Point you see
12 current detail at -- aid August 9th, 2010.
13 Do you see that?
14 A. Yes.
15 Q. And, I mean, I'll tell you that
16 my read is that this is some sort of
17 expansion to the current detail aid, and
18 I'm wondering if this was done as a result
19 of the communications with DDMAC that you
20 just referenced.
21 MR. DIAMANTATOS: Objection to
22 form.
23 MS. WELCH: Objection to form;
24 foundation.

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1 BY MS. BAIG:
2 Q. Or if this is something
3 different.
4 MS. WELCH: Same objections.
5 MR. DIAMANTATOS: Assumes facts.
6 A. I'd say it's something different
7 because this is in 2012 and what I was
8 speaking to was in 2009 or 2010.
9 Q. Okay. Do you have an
10 understanding as to how the detail aid was
11 being expanded?
12 MS. WELCH: Objection to form;
13 foundation; assumes facts not in
14 evidence.
15 BY MS. BAIG:
16 Q. If it was.
17 MS. WELCH: Same objections.
18 A. No.
19 Q. And you don't recall any sort of
20 expansion of the detail aid at around that
21 time, correct?
22 A. I don't even know what you mean
23 by expansion.
24 But no.

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1 Q. Well, I'm just reading the front
2 page where it says "Expansion." It says
3 "Kadian detail aid expansion."
4 A. That means it could be bigger
5 piece of paper. That's an expansion,
6 potentially.
7 Q. Is that how you read this
8 document?
9 A. Do you want me to read every
10 page? I'll take my time and go through it
11 and provide you my feedback.
12 Q. I'm just wondering how you read
13 detail aid expansion.
14 Is that a term -- a term of art,
15 that you're aware of, or not?
16 A. Again, I'm not sure what --
17 Q. It's not a term of art I'm aware
18 of.
19 A. Great.
20 Q. What's ABM?
21 A. Where is that?
22 Q. ABM comment. It's on page 1 of
23 the second document, which is '085, the
24 Bates number ending in '085.

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1 A. I don't know.
 2 Q. And if you see the next page,
 3 there's a reference to the co-pay card and
 4 brochure.
 5 A. Yes.
 6 Q. And that's the \$50 coupon that
 7 we talked about earlier.
 8 Is that right?
 9 MS. WELCH: Objection to form;
 10 foundation.
 11 A. I'm not sure.
 12 It's in 2012, so I don't know if
 13 that's the program that was still in place
 14 or not.
 15 Q. And, do you see at the top it
 16 states, the top of that page it states:
 17 My only suggestion would be to go back to
 18 the co-pay card that says \$50 off as it
 19 gave a clear concise message. With the
 20 new co-pay card that reads \$1200 off per
 21 year, offices are confused by the
 22 breakdown per month. By the time the
 23 patient receives the co-pay card, the \$50
 24 off per prescription is lost.

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1 foundation.
 2 A. Not that I'm aware of.
 3 (Pause.)
 4 Q. Do you recall that Kadian sales
 5 reps were used to market oxymorphone ER at
 6 all?
 7 MS. WELCH: Objection to form.
 8 A. Oxymorphone ER, I believe there
 9 was a period of time when we asked the
 10 Kadian sales team to send a message, or to
 11 deliver a message of availability that
 12 that product was still available. I don't
 13 think that would be -- in my world,
 14 constitute as marketing or promotion. It
 15 was a availability reminder.
 16 We had a situation where the
 17 brand company, which was Endo, had removed
 18 the -- certain strengths of their branded
 19 oxycodone ER. They had multiple other
 20 strengths. And we were the only generic
 21 selling, or one of a few generics selling
 22 those other strengths. We wanted to make
 23 certain that the physician community was
 24 made aware that that approved available

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1 Do you see that?
 2 A. That's what it says.
 3 Q. Do you know if there was ever a
 4 movement from a \$50 co-pay off with a
 5 maximum of \$600 to a maximum of \$1200?
 6 MS. WELCH: Objection to form;
 7 foundation.
 8 A. No.
 9 Q. So you don't know if there was
 10 ever a newer co-pay card that reads \$1200
 11 off per year?
 12 A. Yes.
 13 If you want to show it to me, I
 14 could take a look at it, but I'm not
 15 familiar with that.
 16 Q. Okay. You don't recall the
 17 co-pay card changing in that way ever?
 18 A. I don't specifically remember,
 19 but if you have something to show me, I'd
 20 be happy to review it.
 21 Q. Do you remember generally the
 22 co-pay card being expanded or changed in
 23 any way, or no?
 24 MS. WELCH: Objection to form;

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1 generic drug was still available for
 2 medically necessary patients, because the
 3 Endo team was out. They had discontinued
 4 and said it was no longer available.
 5 Q. And you were doing that so as to
 6 maximize the company's results, correct?
 7 MS. WELCH: Objection to form.
 8 A. We were doing that to let
 9 physicians know that that product was
 10 still available because others were saying
 11 that it had been discontinued, it was no
 12 longer available.
 13 And, again, it was an
 14 FDA-approved medicine for medical
 15 necessity.
 16 Q. And, was the sales team -- did
 17 the sales team receive compensation that
 18 was tied to increasing scripts for
 19 oxymorphone ER?
 20 MS. WELCH: Objection to form;
 21 foundation.
 22 A. Not that I'm aware of.
 23 It was, again, it was a reminder
 24 as part of visiting a physician's office

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1 with a primary focus on Kadian. Then it
 2 was a reminder of -- there may have been a
 3 leave-behind, I don't know, to say the
 4 product was still available.
 5 MS. BAIG: Let's have the next
 6 document marked as Exhibit 14.
 7 It's Bates stamped
 8 ACTAVIS0506794 through '814. It
 9 starts as an email from you to Michael
 10 Perfetto dated July 15th, 2011. The
 11 subject is "Sales rep training
 12 material draft."
 13 (Boothe Exhibit 14, email chain
 14 ending July 15, 2011, with attachment,
 15 Bates No. ACTAVIS0506794 to 0506814,
 16 was marked for identification, as of
 17 this date.)
 18 THE WITNESS: (Perusing document.)
 19 Okay. Yeah.
 20 BY MS. BAIG:
 21 Q. If you look at the fifth page
 22 in, you see an email from Jinping
 23 McCormick to Nathalie Leitch and Terrence
 24 Fullem.

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1 contracts group, part of our sales
 2 organization under Mike Perfetto. Generic
 3 sales organization.
 4 Q. And then, if you move to the
 5 page before in the email from Michael
 6 Perfetto to Jinping and others, there's a
 7 query: Have we all agreed upon the bonus
 8 plan for this?
 9 Do you see that?
 10 A. Yes.
 11 Q. And there's a suggestion of
 12 ideas. I now -- he goes on to state: I
 13 know I suggest a few different idea.
 14 Do you see that?
 15 A. Yeah.
 16 Q. And he states: I would prefer a
 17 contest for the top five or ten reps based
 18 on percentage group of scripts on this
 19 product.
 20 Do you see that?
 21 A. Yeah.
 22 Q. And he goes on to state: But
 23 I'm open to any and all ideas that
 24 maximize our results with not breaking the

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1 A. Which page?
 2 Q. The fourth page in.
 3 In which she asks for a time
 4 slot for oxymorphone ER training at your
 5 upcoming sales meeting.
 6 Do you see that?
 7 MS. WELCH: What's the Bates
 8 number?
 9 MS. BAIG: The Bates stamp
 10 number ends in '798.
 11 BY MS. BAIG:
 12 Q. Middle of the page.
 13 A. Mm-hm.
 14 Q. Do you see where Jinping is
 15 asking for a time slot for oxymorphone ER
 16 training at your upcoming sales meeting?
 17 A. Yes.
 18 Q. Okay. And it suggests that Ara,
 19 I believe that's Ara Aprahamian, would
 20 deliver the training if no one objects.
 21 Do you see that?
 22 A. Yes.
 23 Q. What was Ara's position again?
 24 A. Ara was in our pricing and

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1 bank.
 2 Do you see that?
 3 A. Yeah.
 4 Q. Does that suggest to you that --
 5 that there was going to be a bonus plan
 6 for the sales reps for their sales of
 7 oxymorphone ER?
 8 MR. DIAMANTATOS: Objection to
 9 form; foundation.
 10 A. Again, that was -- it appears
 11 that that's what Mike was proposing. I'm
 12 not certain if we ever put it into
 13 applies.
 14 And again, Mike ran the generics
 15 team. So these may be for generics sales
 16 rip, which again, he had five sales
 17 representatives under his group calling on
 18 the generic accounts. It's not clear to
 19 me if this is for the Kadian team or not.
 20 It's a proposal. It may or may not have
 21 happened.
 22 And, again, you got Nathalie and
 23 Terry and others involved. So, I don't
 24 specifically recall if we did this or not.

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1 So if there's a document that shows that
 2 we did it, or -- I'd be happy to comment
 3 on it.
 4 Q. So, do you see in the next email
 5 on the next page he's asking Natalie and
 6 Terry for a slot at their meeting.
 7 Does that suggest to you that
 8 it's a meeting with Kadian sales reps and
 9 not the generic sales reps?
 10 MR. DIAMANTATOS: Objection.
 11 MS. WELCH: Objection;
 12 foundation.
 13 A. Where is that?
 14 Q. On the next page where he's
 15 asking Nathalie -- sorry. Where Jinping
 16 is asking Nathalie and Terry: Can you
 17 please schedule a time slot for
 18 oxymorphone ER training at your upcoming
 19 sales meeting?
 20 A. Again, that was Jinping who was
 21 in the generic marketing group asking.
 22 Q. Yeah.
 23 A. It may or may not have happened.
 24 Q. Sure.

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1 A. Yeah, I mean, I read this and
 2 this here are all ideas being generated.
 3 Look at the first chart, you see: Meeting
 4 is with the 25th. The piece will need to
 5 send through regulatory and legal for
 6 review and approval.
 7 So, the extent to which we did
 8 or didn't ever do this was subject, again,
 9 to regulatory and compliance approval as
 10 well. We may have done it. We may not
 11 have done it. I don't specifically
 12 remember.
 13 Q. So, if you go back to the top of
 14 page 2 in the email from Michael Perfetto,
 15 do you see where he states: Fine. I
 16 don't want to think -- I don't want to
 17 overthink this. I approve. Just do it.
 18 Does that suggest to you that
 19 this was put into place?
 20 A. No.
 21 Q. And, do you see at the beginning
 22 of the very first page in your email to
 23 Michael Perfetto it says: FYI only, but I
 24 think it's good.

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1 You don't recall whether it
 2 happened or not?
 3 A. I don't have any specific
 4 recollection, but --
 5 Q. And, do you see on the second
 6 page of the entire document at the very
 7 bottom it says: Nathalie suggested a
 8 regional TEAL contest.
 9 A. Where is that?
 10 Q. At the very bottom of the second
 11 page.
 12 A. Okay. Yep.
 13 Q. And it goes on to state: There
 14 are four teams.
 15 Do you see that?
 16 A. Yes.
 17 Q. Does that -- does that give you
 18 any indication as to which teams are being
 19 involved in this promotion of oxymorphone?
 20 MR. DIAMANTATOS: Objection to
 21 form --
 22 MS. WELCH: Objection to form.
 23 MR. DIAMANTATOS: -- foundation;
 24 assumes facts.

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1 Does that suggest to you that it
 2 was put into place?
 3 A. That's not from me. That's from
 4 Mike to me.
 5 Q. Yes.
 6 Does that suggest to you that
 7 this program was put into place?
 8 A. It may have been. It may not
 9 have been.
 10 I -- if you had the agenda from
 11 that sales meeting, maybe we could both
 12 know the truth.
 13 Q. So you don't recall one way or
 14 another whether the Kadian sales force was
 15 tasked with promoting oxymorphone ER?
 16 MS. WELCH: Objection to form;
 17 misstates testimony.
 18 A. I mean, as I said earlier,
 19 there -- I do have a recollection at some
 20 point we -- we leveraged or utilized the
 21 Kadian sales team to provide information
 22 that it was available, our FDA-approved
 23 first-in-market generic for these
 24 strengths because the Endo product had --

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1 Endo discontinued those two strengths. So
 2 if there's no -- physicians aren't aware
 3 that the strengths are available, they
 4 won't write the script, and therefore
 5 there will be no prescriptions coming to
 6 the generic side of the business.
 7 Q. And a little further down on the
 8 first page, do you see from Jinping
 9 McCormick to Perfetto and others it
 10 states: Attached please find a draft
 11 oxymorphone training material for sales
 12 reps?
 13 A. Yeah.
 14 Q. And, if you flip through three
 15 or four pages, do you see an attachment
 16 that appears to be a Power Point entitled
 17 "Introduction of Oxymorphone Hydrochloride
 18 Extended Release Tablets CII Sales
 19 Training Class"?
 20 A. Again, if this is connected with
 21 that email, I think it's clearly says this
 22 is a draft. We'll need to go through
 23 regulatory and legal for review and
 24 approval.

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1 sheet, as it's called, would go through
 2 some sort of a internal review involving
 3 legal, compliance, regulatory and the
 4 commercial team and submitted to DDMAC.
 5 Q. And, if you turn the page, you
 6 see an example, I believe, of a sell
 7 sheet. It says "Front and back."
 8 Do you see that?
 9 A. Page 4?
 10 Q. Yes.
 11 A. Yep.
 12 Q. Is that a sell sheet that would
 13 have been left with prescribers?
 14 MR. DIAMANTATOS: Objection to
 15 form; foundation.
 16 A. I don't know. Again, I -- it
 17 has the PI on it, but that may or may not
 18 be what -- if it was a leave-behind or
 19 not, I don't know.
 20 Q. What do you mean by PI?
 21 A. That's the prescriber
 22 information in the label.
 23 Q. What was the purpose of sell
 24 sheets typically, or how were they used?

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1 So, I have no knowledge this is
 2 the draft, this is the final, this is what
 3 was or wasn't done. And if it was done,
 4 you know, again with our legal, compliance
 5 and regulatory review, then fine.
 6 Q. And, would you have seen and
 7 approved any draft that went to the sales
 8 reps before it went to them?
 9 A. No.
 10 MS. WELCH: Objection to form;
 11 asked and answered.
 12 BY MS. BAIG:
 13 Q. That would have been Jinping
 14 McCormick?
 15 A. No.
 16 Q. Who would that have been?
 17 A. Again, any set of materials that
 18 would have gone or been shared with our
 19 Kadian sales organization -- by the way,
 20 again, if it was for internal or if it was
 21 something that went to a -- as part of a
 22 promotional material to a physician, which
 23 this appears to be something of a
 24 potential promotional material, or a sell

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1 MS. WELCH: Objection to form;
 2 foundation.
 3 A. This is, again, more like on the
 4 generic side. So this to me is actually
 5 something that Jinping would have
 6 developed. This is something that
 7 potentially we would have put into one of
 8 the advertising journals that we talked
 9 about before, like Drug Store News or U.S.
 10 Pharmacists.
 11 So, this is deemed a promotional
 12 material 'cause it has information about
 13 product and it has the PI. This would
 14 also go through an internal review and
 15 ultimately, again, regulatory, compliance,
 16 legal, marketing and submitted to DDMAC.
 17 Any communication such as this would go
 18 through that.
 19 So, this in the vernacular of
 20 Actavis meant that this is a material that
 21 was for the generic side. And we may have
 22 repurposed it potentially, as you're
 23 asking, and provided it to the sales
 24 organization, but I'm not clear if we did

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1 that. I'm not clear -- it's not clear to
2 me if we did, if they had the ability to
3 then just for their own knowledge or if it
4 was something that we were actually going
5 to leave potentially at a physician's
6 office or not.

7 Q. Okay. And, do you see the next
8 page where it says "Marketing Support"?

9 A. Yes.

10 Q. And there's three bullets. The
11 first one is: A two-wave direct mail
12 campaign to the top 10,000 prescribing
13 doctors. The first wave is planned to
14 coincide with our launch to bring
15 awareness to prescribing doctors. A
16 follow-up mailing is planned for four
17 weeks post-launch.

18 Do you see that?

19 A. Yes.

20 Q. Do you recall whether or not a
21 two-wave direct mail campaign to the top
22 10,000 prescribing doctors was
23 implemented?

24 A. It may have been. No, I don't

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1 specifically recall.

2 Q. But the top 10,000 prescribing
3 doctors, that data would have come from
4 IMS?

5 MS. WELCH: Objection to form.

6 MR. DIAMANTATOS: Foundation.

7 A. Could have been IMS or Wolters
8 Kluwer, whomever, we -- you know, we or
9 others would use to get prescribing
10 information. Those are the third party
11 groups that sell that kind of data, yes.

12 And it could be, again, total
13 class. It could be all pain medications.
14 It could be opioids. It could be lots of
15 things. I don't know who was this group
16 here.

17 Q. And the second bullet is:
18 Journal advertising to cover both
19 prescribers and pharmacists.

20 Do you see that?

21 A. Yes.

22 Q. And it references practical pain
23 management and pharmacy times, which I
24 think we referred to earlier.

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1 Correct?

2 A. Yes.

3 Q. And then it also references an
4 email campaign reaching a pharmacy
5 audience of 87,000.

6 Correct?

7 A. Yes.

8 Q. So, if this went forward as
9 proposed here, is it your understanding
10 that it's this sell sheet that's being
11 sent to a pharmacy audience of 87,000? Or
12 what actually is being sent?

13 MS. WELCH: Objection to form;
14 foundation; speculation.

15 A. Yeah, I don't know what -- what
16 was or wasn't sent.

17 Q. Do you see on the next page it
18 has the oxymorphone boxed warning?

19 A. Page 7?

20 Q. Yeah.

21 A. Yes.

22 Q. And there's a warning. It says:
23 Potential for abuse. Importance of proper
24 patient selection and limitations of use.

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1 Do you see that?

2 A. Where is that?

3 Q. The first line in the box.

4 A. Okay. Yes.

5 Q. Did you have an understanding as
6 to what proper patient selection meant?

7 A. That's really a decision for a
8 physician to make.

9 This is a standard black box
10 warning for all Class II narcotics. You
11 would see this on other Class II
12 narcotics.

13 The physician determines what
14 proper patient selection is.

15 Q. Did you have an understanding as
16 to how a physician would go about
17 determining proper patient selection?

18 A. Absolutely not.

19 MS. WELCH: Objection to form.

20 MR. DIAMANTATOS: Foundation.

21 BY MS. BAIG:

22 Q. And, do you see under the second
23 bullet under "Potential For Abuse" it
24 states: This should be considered --

1 well, it's about oxymorphone. And then it
2 states: This should be considered when
3 prescribing or dispensing oxymorphone
4 hydrochloride extended-release tablets in
5 situations where the physician or
6 pharmacist is concerned about an increased
7 risk of misuse, abuse, or diversion.

8 Do you see that?

9 A. Yes.

10 Q. Do you know how the physician or
11 pharmacist was supposed to gauge whether
12 there was an increased risk of misuse,
13 abuse, or diversion?

14 MS. WELCH: Objection to form;
15 foundation.

16 A. Not specifically. Although,
17 again, I don't know what time this is.
18 There was either a risk map or some sort
19 of REMS probably associated with class of
20 products by this point.

21 Q. And hydromorphone was the
22 generic of Opana ER.

23 Is that right?

24 A. I think it's oxymorphone.

1 Q. Oxymorphone, sorry.

2 Was that the generic for
3 Opana ER?

4 A. Oxymorphone hydro --
5 hydrochloride extended-release tablets
6 would be the generic for Opana ER.

7 Q. And Opana ER was no longer on
8 the market?

9 A. Again, in 2011? I'm just
10 reading from the materials here.

11 Opana ER, which is the Endo
12 product, had multiple different strengths
13 ranging from I think as low as five
14 milligrams to maybe up to 40 or 60, and
15 these two specific strengths, which were
16 7-and-a-half and 15 milligrams, Actavis
17 had FDA approval for a generic of it, and
18 Endo had removed the product. So we
19 wanted -- again, we wanted to make sure
20 physicians were aware, physicians and
21 pharmacists were aware that there was an
22 available medically -- FDA-approved and
23 medically available product for their
24 patient population subject to their

1 decisions on dispensing and prescription
2 writing.

3 Q. So, was it your understanding
4 that Opana ER was still on the market in
5 certain strengths?

6 A. Yes.

7 Q. Until when?

8 A. Opana ER was on the market until
9 late 2018.

10 Q. The brand name?

11 A. Yes.

12 Q. Did you have an understanding as
13 to why the certain -- why certain
14 strengths of Opana ER were withdrawn from
15 the market?

16 MS. WELCH: Objection;
17 foundation.

18 A. I have my understanding, but it
19 may be inconsistent with Endo's
20 understanding.

21 Q. Well, what's your understanding?

22 A. My understanding is Endo removed
23 their strengths because they didn't want
24 the generics to come in with an approved

1 lower cost alternative to their branded
2 product.

3 Q. And, why do you think that that
4 might be inconsistent with Endo's
5 experience -- with Endo's understanding?

6 MS. WELCH: Objection;
7 speculation.

8 A. Yeah, I don't want to speak for
9 Endo, but it was a common practice that
10 brand companies would discontinue
11 strengths or discontinue products in
12 advance of the generic market formation.

13 Q. And, if you look at the second
14 to last page before the "thank you" page.

15 A. Yep.

16 Q. Do you see under "Compensation
17 and Incentive" there's three bullet
18 points. One is team award, one is
19 individual award, and one is renewable
20 upon review of overall performance.

21 Do you see that?

22 A. Yep.

23 Q. And it suggests that for the
24 team award the top regional team with the

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1 highest cumulative prescription written
2 for the period of August through October
3 of 2011 each member of the team would win
4 \$500.
5 Correct?
6 A. Yes.
7 Q. And for the individual award it
8 states that the top two performers from
9 each team with the highest cumulative
10 prescription written for the period of
11 August through October 2011 each award is
12 \$1,000.
13 Correct?
14 A. Yes.
15 Q. Do you recall whether sell
16 sheets were used for both branded and
17 generic drugs?
18 MS. WELCH: Objection to form;
19 foundation.
20 A. Again, in this draft materials,
21 the shell -- the sell sheet that's shown
22 here, from my recollection, would be
23 representative of what we would do with
24 all generic products being approved and

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1 Again, none of the generic products would
2 be detailed to physicians with, you know,
3 some exception. This may have been a
4 limited exception. But generally, the
5 generic products are not -- there's no
6 activity calling on physicians. It's
7 purely a key account sale to the major
8 chains or wholesalers and then reminder
9 notices or communications to pharmacists.
10 Q. Did Actavis also use pricing and
11 incentive programs to try to maximize
12 sales?
13 A. Pricing and incentives programs
14 with whom?
15 Q. With its key clients.
16 MS. WELCH: Objection to form.
17 A. What do you mean by key clients?
18 Q. Well, do you have an
19 understanding of who some of the key
20 clients were, let's say, in the generics
21 division?
22 MS. WELCH: Objection to form.
23 A. So, our customers in the generic
24 division, people who bought our

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1 launched across all of our multiple dose
2 forms and classes and therapeutic areas.
3 Q. Did you use these types of sell
4 sheets for branded drugs as well?
5 A. I don't believe we did, but I'm
6 not a hundred percent certain.
7 And, again, we only had one
8 brand product. It was called Kadian.
9 Q. And, are you familiar with the
10 term "pocket guide"?
11 A. I've heard of it, but I'm not,
12 you know, intimately familiar with it.
13 Q. What's your understanding of
14 what a pocket guide is?
15 MS. WELCH: Objection;
16 foundation.
17 A. I think it's a smaller version
18 of, again, approved promotional materials
19 so it could fit into a pocket.
20 Q. And, do you recall whether
21 Actavis used pocket guides for its branded
22 and generic opioids?
23 A. Not specifically. We may --
24 again, you said branded and generic.

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1 FDA-approved generics, would be either the
2 large direct chains, like a CVS, a
3 Walgreens, a Rite Aid, a large wholesaler
4 like a McKesson, a Cardinal,
5 AmerisourceBergen, mail orders, Express
6 Scripts, Medco, things like that, those
7 are our customers. And yes, there would
8 be -- we would put programs in place
9 potentially to incentivize them through
10 additional rebates to take a bigger basket
11 of our available offerings. You know, at
12 any given time, we may have had 200, 250
13 or 300 SKUs available, and at a given
14 time, we may have 50 of those or 60 of
15 those or a hundred of those on contract at
16 those different accounts.
17 So, part of, you know, Mike and
18 the team's opportunity and challenge was
19 to maybe get additional distribution on
20 our FDA-approved generic products and
21 somehow or potentially, like you said,
22 incentive programs and such would be an
23 incentive providing an additional discount
24 to our customers to take more of our

1 products.

2 Q. And those were typically
3 reflected in the customer agreements.

4 Is that right?

5 A. Yes. There would be customer
6 contracts and then basically you contract
7 on a product-by-product basis and those
8 individual products would have the key
9 terms and conditions. And there may be
10 quarter end rebates or annual rebates
11 based on volume incentive tiers, so that
12 would be tracked throughout the course of
13 the year. Our finance organization would
14 track those. They would accrue
15 potentially for them if they were reached,
16 and then we would make those payments 30
17 or 90 days after the time period had
18 elapsed if the -- if the account achieved
19 the threshold.

20 Q. Did Actavis attend certain trade
21 shows to promote its drugs?

22 MR. DIAMANTATOS: Objection to
23 form.

24 MS. WELCH: Objection to form.

1 A. Could you be specific? What do
2 you mean by trade shows and promote its
3 product?

4 Q. Well, by promote its product, I
5 mean maximize sales.

6 By trade shows, my question is
7 to you.

8 Do you know whether Actavis
9 participated in certain trade shows, or
10 that the marketing and sales departments
11 participated in certain trade shows?

12 MS. WELCH: Objection to form.

13 A. Yes, the generic sales team did
14 attend trade shows, customer events. Yes.

15 Q. What types of trade shows?

16 MS. WELCH: Objection to form.

17 A. There were multiple organization
18 who would organize they would call them
19 vendor events. They would call them
20 technical exchanges. One was the NACDS,
21 which is the National Association of Chain
22 Drug Stores. They would have two events,
23 one in the spring, which was the annual
24 meeting; one in the fall, or late summer,

1 fall, which was the technical exchange.
2 There was a thing called ECRM. I don't
3 know what ECRM stands for. That was more
4 of a regional event.

5 Again, all on the generic side.

6 Our branded team would not
7 attend any. There's no trade shows
8 that -- well, that they would attend. I
9 mean, sometimes there was a brand
10 component, but we didn't actually have a
11 sales group or a team that would go to
12 those things.

13 Those are the trade events that
14 I'm familiar with. There might be others,
15 but those are the ones I'm familiar with.

16 Q. And, did you attend any of
17 those?

18 A. I, in the normal course of
19 business, I would attend several of those.
20 I would do the NACDS annual meeting most
21 likely in April.

22 Early in my tenure when I
23 mentioned our Alpharma days or early
24 Actavis days, I would attend the NACDS

1 fall tech conference, but I stopped going
2 to that at a certain point.

3 I never went to ECRMs.

4 There was HDMA, there was all
5 bunch of different ones, but no, I did not
6 attend those.

7 Q. Who would attend ECRM?

8 A. Again, ECRM would probably be in
9 Mike Perfetto's organization the sales --
10 the sales team. They would attend those
11 because it's much more regional, smaller
12 distributors and wholesalers and such.

13 Then Mike and pretty much most
14 of his commercial group, including Jinping
15 and Ara and the sales team, would attend
16 the NACDS fall tech.

17 Mike and I, and depending on the
18 year or the circumstance, we may bring one
19 or two people along with us, would attend
20 the NACDS annual meeting which was always
21 in Palm Beach or in Scottsdale, Arizona.

22 Q. And how much HDMA?

23 A. Again, either Mike or his sales
24 team or folks -- HDMA was -- that's -- I

1 think that's a wholesaler. So depending
2 how Mike had assigned accounts to the
3 sales team, they would attend. You know,
4 there are other events that were specific
5 to GPOs. So the guy that had the GPO
6 account would probably go to those.

7 But, again, that's my
8 recollection of the events.

9 Q. And, did Actavis set up booths
10 at these trade shows?

11 A. At NACDS, again, the fall tech
12 you would actually pay for exhibit space
13 to be on the floor. So we actually we had
14 an exhibit booth like companies would have
15 20-by-20, whatever, and we would do those.

16 At the NACDS annual meeting, you
17 basically bought a table, so you had the
18 privilege to sit outside in the sun, which
19 was nice most of the time except when it
20 rained, to meet with customers. You
21 bought a table. I believe ECRM and the
22 other ones, I don't think you bought a
23 booth, but you actually rotated through
24 the customers areas, as my -- as it was

1 described to me. I've never been to them.

2 Q. And, how about HDMA, were there
3 booths there?

4 A. I don't know.

5 MS. BAIG: Let's have this
6 document marked as Exhibit 15.
7 ALLERGAN_MDL_00676546 through '6582.

8 It starts as an email from Mike
9 Perfetto to you dated February 25th,
10 2012. Subject is "Final
11 Presentation." Attachments
12 "Leadership summit presentation
13 final."

14 (Booth Exhibit 15, email chain
15 ending February 25, 2012, with
16 attachment, Bates No.
17 ALLERGAN_MDL_00676546 to 00676585, was
18 marked for identification, as of this
19 date.)

20 THE WITNESS: There's the leaky
21 bucket.

22 BY MS. BAIG:

23 Q. And, if you turn to the second
24 page, you see there's a Power Point that

1 starts: Realizing our vision. Building a
2 global leader in generic pharmaceuticals.

3 And it has Mike Perfetto's name,
4 Jinping -- and Jinping McCormick's.

5 A. Nice looking at the pictures of
6 the people. I haven't seen these in a
7 long time. Even me.

8 Okay. Sorry.

9 What's the question?

10 Q. So, what is this document?

11 A. So, again, this was a document
12 that looks like Mike and Jinping
13 developed. I'm not certain where it was
14 utilized.

15 Leadership summit. So, I
16 believe this was something that -- yes.
17 So, this was in February of 2012, Actavis
18 Group the global company, would have an
19 annual meeting. It was, again, talk about
20 last year's results, talk about goals and
21 objectives, and we called it the
22 leadership summit, or we called it lots of
23 different things. But effectively a
24 subset of the senior leaders of all the

1 different divisions, groups, locations
2 would all meet in one location, and as
3 part of that, there were presentations,
4 you know, information sharing across the
5 group, a chance for interaction, a chance
6 for networking, a chance to share best
7 practices.

8 And, at this meeting, which was,
9 again, held in Innsbruck, actually, we
10 did, or Mike and Jinping did a
11 presentation about the generic
12 organization for all of Actavis Group. So
13 it was an internal presentation developed
14 for an internal audience, is my
15 understanding of this document.

16 Q. When you say an internal
17 audience, what do you mean by that?

18 A. Just within Actavis, Actavis
19 Group.

20 Q. Okay. And, if you look to the
21 page that ends in '573, the heading is
22 "Top 10 Generic Products for 2011."

23 A. Yep.

24 Q. It appears that the top two

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1 generic products at that time were
 2 oxycodone tabs and fentanyl patch.
 3 Is that right? According to
 4 this.
 5 A. Yes.
 6 Q. And, does this show -- report
 7 that oxycodone tabs' net sales growth for
 8 that year was 55 percent?
 9 MS. WELCH: Objection to form.
 10 A. Yes. That's what the chart
 11 says, yep.
 12 Q. And the fentanyl patch's sales
 13 growth was 39 percent, correct?
 14 A. On a year-over-year basis, yep.
 15 Q. And those were the two top
 16 products at the time?
 17 MR. DIAMANTATOS: Objection to
 18 form.
 19 A. For the generics group. Over
 20 our total of \$523 million in sales in
 21 2011, those were the top two, yes.
 22 Q. And, if you turn about three
 23 pages further, you see a document that has
 24 some pictures on it called "Marketplace

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1 this and I'm wondering if this is the tree
 2 ad.
 3 A. It's got a tree in it.
 4 Q. Did you ever contract with your
 5 distributor customers for marketing
 6 services?
 7 MS. WELCH: Objection to form.
 8 A. I think the answer is yes, but
 9 I'd be happy to comment to a document.
 10 Q. Do you recall entering into
 11 negotiations with big distributors like
 12 McKesson such that you would pay marketing
 13 fees to them?
 14 MS. WELCH: Objection to form.
 15 A. I think it's the other way
 16 around. I mean, the way the McKesson
 17 contracts were is they charged you
 18 marketing fees for the privilege of
 19 selling product to them.
 20 Q. They were charging Actavis
 21 marketing fees?
 22 A. Mm-hm.
 23 Q. So you would pay marketing fees
 24 to --

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1 Support Advertising."
 2 Do you see that?
 3 A. Yes.
 4 Q. And there's one that has a tree
 5 on it.
 6 Do you see that?
 7 MS. WELCH: Which Bates number?
 8 MS. BAIG: It ends in '577.
 9 A. Is that what that thing is to
 10 the right? That thing?
 11 Q. Well, I could tell you --
 12 MS. WELCH: It's a different
 13 number, '577.
 14 A. This page.
 15 Q. Ending '577.
 16 A. Sorry. Yeah.
 17 Q. Was this what was referred to
 18 internally as your tree ad?
 19 A. I don't know.
 20 Was there an internal ad --
 21 thing called tree ad?
 22 Q. I can just tell you that Jinping
 23 told me about a tree ad, but I didn't have
 24 a picture of it. But now I'm looking at

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1 A. Right, but it wasn't like we
 2 negotiated. We didn't really get much
 3 marketing. They -- that was part of
 4 their -- McKesson if it was Progen
 5 generics in their fee structure, they
 6 charged you for marketing fees, they
 7 charged you for data fees, they charged
 8 you for warehousing fees. That was all
 9 part of the program. And that was pretty
 10 typical for the large wholesalers.
 11 On occasion we would contract,
 12 for example, to utilize their network of
 13 pharmacists as part of their awareness ads
 14 for new product launches, we would pay
 15 them so they could, through their network,
 16 share our information. That was when you
 17 asked the first question about did I
 18 contract for services, that's what I was
 19 referring to, is my understanding.
 20 MS. BAIG: Let's have this
 21 document marked as Exhibit 16.
 22 It's Bates stamped
 23 ACTAVIS0811957 through '959. It's an
 24 email from you to Mike Perfetto on

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1 October 12th, 2011.
 2 MS. WELCH: Where are you?
 3 THE WITNESS: What's that?
 4 MS. BAIG: I was just stating
 5 what it is.
 6 THE WITNESS: That's not the one
 7 I have.
 8 MS. WELCH: That's not the one I
 9 have either.
 10 (Pause.)
 11 MS. WELCH: This has a 1969
 12 bottom Bates number.
 13 MS. BAIG: No, I think you've
 14 got the wrong one.
 15 THE WITNESS: Here you go
 16 (handing.)
 17 MS. BAIG: Thank you.
 18 (Pause.)
 19 MR. DIAMANTATOS: I wrote
 20 Exhibit 16 on my copy, counsel. In
 21 case you want to switch it out with an
 22 exhibit sticker.
 23 MS. BAIG: Okay.
 24 MS. WELCH: So did I.

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1 Q. Okay. Are you familiar with a
 2 company called Kerr Drug and Weiss?
 3 A. No.
 4 K-E-R-R?
 5 Q. Mm-hm.
 6 A. Kerr Drug?
 7 Q. Mm-hm.
 8 A. Yes. I'm -- yeah, they, again,
 9 a regional wholesaler distributor.
 10 And Weiss, W-E-I-S-S?
 11 Q. Mm-hm.
 12 A. Weiss, that's the supermarket
 13 chain, Weiss Markets.
 14 Q. Okay.
 15 A. Pennsylvania and Maryland and
 16 New Jersey.
 17 Q. And, do you know whether they
 18 did marketing for Actavis at all?
 19 MS. WELCH: Objection to form.
 20 A. Again, they were an account. So
 21 again, we possibly -- well, again, I don't
 22 know. If you show me a document, I can
 23 comment on it.
 24 Q. But you don't have a

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1 THE WITNESS: I don't have a
 2 pen.
 3 (Pause.)
 4 MS. BAIG: Okay. We'll come
 5 back to that one. It's no problem.
 6 BY MS. BAIG:
 7 Q. Are you familiar with the
 8 company Key OptiSource?
 9 A. OptiSource?
 10 Q. Mm-hm.
 11 A. I know who they are.
 12 Q. Who are they?
 13 A. They're a distributor or a
 14 regional wholesaler, is my understanding.
 15 Q. Do they do mailing and
 16 telemarketing?
 17 A. I don't know.
 18 MS. WELCH: Objection to form;
 19 foundation.
 20 A. If they did, you can show me the
 21 materials. Yeah.
 22 Q. Do you know whether they did
 23 mailing and telemarketing for Actavis?
 24 A. I don't specifically recall.

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1 recollection as to whether or not they did
 2 any marketing for Actavis?
 3 MS. WELCH: Objection to form.
 4 A. No.
 5 Q. How about Morris Dixon?
 6 A. Morris Dixon also is a regional
 7 wholesaler.
 8 So, you keep asking about
 9 marketing for Actavis. So, if we had
 10 Morris Dixon --
 11 Q. Sorry. Were you going to finish
 12 your sentence?
 13 A. I -- you didn't ask a question,
 14 so.
 15 Q. I was just wondering if you were
 16 familiar with Morris Dixon.
 17 A. Yes.
 18 Q. They're the regional wholesaler.
 19 Do you know whether they did any
 20 marketing for Actavis, or you don't know?
 21 MR. DIAMANTATOS: Objection to
 22 form.
 23 MS. WELCH: Objection to form.
 24 A. What I was going to say is,

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1 again, these regional wholesalers, they
 2 have pharmacies who buy off of their
 3 program. So, to the extent of which we
 4 got a product award of Morris Dixon,
 5 Morris Dixon may send a notice to its
 6 pharmacies with here's the Actavis
 7 product, it's available. Here's the
 8 transfer price. That's the information
 9 that they would provide to their
 10 pharmacies. If that constitutes marketing
 11 on behalf of Actavis, that answer would be
 12 yes, but that's not something that Actavis
 13 would have done or paid for.

14 Q. But you would have marketing --
 15 so, how is that different from the
 16 marketing agreements we talked about just
 17 a few moments ago if you had -- where
 18 you're paying a marketing fee to somebody
 19 like McKesson?

20 A. So, again, McKesson, one of the
 21 largest big three wholesalers. Again,
 22 quite frankly, they set the terms. So, in
 23 their contract, they charged us fees.
 24 Cardinal would do the same thing, a

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1 percentage of WAC, percentage of AWP. It
 2 was sort of in their contract for the
 3 privilege of doing business with them.

4 Some of these smaller accounts
 5 are much smaller. They didn't have the
 6 ability to push their fees on to the
 7 suppliers. But if we wanted to
 8 potentially communicate product
 9 availability or when we got a product
 10 award to the one of these accounts and we
 11 wanted to communicate to their members or
 12 their affiliates, we may have paid a -- a
 13 fee. It could have been \$5,000 or some
 14 number. I don't know specifically. But
 15 that's my recollection of how it worked
 16 with the smaller accounts versus the
 17 larger accounts.

18 Q. I'm not talking about fees in
 19 general though. I'm talking about
 20 something called marketing fees.

21 Are you familiar with paying
 22 marketing fees to someone like McKesson?

23 MR. BAILEY: Objection to form.

24 A. Again, that's what I described.

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1 Q. Okay.

2 A. So, in the contract, they
 3 charged a marketing fee as a percentage of
 4 the total business. So if we're doing \$10
 5 million with them, they charge you one
 6 percent, you're paying a hundred thousand
 7 dollars for marketing fees. You know, we
 8 didn't really have a choice. It's like a
 9 franchise fee at like McDonald's or
 10 something.

11 Q. So they didn't charge additional
 12 marketing fees for doing things like
 13 telephone campaigns or things like that?

14 A. Yes, we did. If we opted --

15 MR. BAILEY: Objection.

16 A. Yes. If we engaged with -- to
 17 get access to their accounts that were on
 18 their programs, we would pay additional
 19 fees, and they call them marketing fees.

20 Q. Okay.

21 MS. BAIG: Let's have this
 22 document marked as Allergan -- as
 23 Exhibit Number 16, and this is Bates
 24 stamped ACTAVIS0851197 through '11960.

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1 (Boothe Exhibit 16, email chain
 2 ending October 12, 2011, Bates No.
 3 ACTAVIS0811957 to 0811960, was marked
 4 for identification, as of this date.)

5 BY MS. BAIG:

6 Q. It's an email from you to Mike
 7 Perfetto dated October 12th, 2011, or it
 8 starts that way.

9 A. (Perusing document.)

10 Q. Do you see on the last page at
 11 the top there's a reference to "a new
 12 sales slick out by week's end" and then it
 13 says "Costco add"?

14 A. Yeah.

15 Q. What's your understanding of
 16 what a sales slick is?

17 A. I'm not sure.

18 Q. And, was Costco a place where --
 19 where there were direct ads?

20 MS. WELCH: Objection;
 21 foundation; form.

22 A. Costco was one of our customers.
 23 They would -- they would purchase -- they
 24 had a generic formulary. So yes.

1 And add is two Ds. A-D-D. So
 2 that means, I would say, an addition
 3 rather than an advertisement, is how I
 4 would read that.
 5 Q. Costco addition?
 6 A. Costco add, A-D-D. Yeah.
 7 Again, this is from Michael
 8 Dorsey, so I -- you know, you would have
 9 to ask him potentially what it meant.
 10 Q. And then next line says
 11 "fentanyl patch" and towards the end it
 12 says "new slick coming."
 13 Do you see that?
 14 A. Mm-hm.
 15 Q. Were there ad slicks for the
 16 fentanyl patch?
 17 MS. WELCH: Objection; form;
 18 foundation.
 19 A. Again, the only thing I'm
 20 familiar with are these we call them sell
 21 sheets, something like that. That may or
 22 may not be what Mike here is referring to
 23 as a slick.
 24 Q. And then there's a reference to

1 smaller accounts that may be networked and
 2 affiliate. By the way, and they my buy
 3 them from multiple. They may go out and
 4 shop around see who's going to be transfer
 5 price. So telemarketing or these sorts of
 6 things are your -- we would be paying for
 7 OptiSource or whomever to reach out to
 8 their affiliated accounts to make them
 9 aware of our product and if we had a
 10 contract with them, what the terms of
 11 that, what the price what has been marked
 12 as what the, again, the transfer costs.
 13 By the way, none of this is to
 14 end consumers. This is to make sure that
 15 our product, or FDA-approved product was
 16 available in these pharmacies. So when a
 17 physician prescription came in or a
 18 patient walked in with a prescription that
 19 it would get filled with the Actavis
 20 generic as compared to the Teva generic or
 21 the Watson generic, 'cause that's the
 22 space we were in. We were competing with
 23 multiple generic suppliers. And when the
 24 prescription comes in it just says

1 a telemarketing program at Key OptiSource.
 2 Do you see that?
 3 A. Mm-hm.
 4 Q. OptiSource, I can't recall what
 5 you said.
 6 Do you recall OptiSource doing
 7 marketing for -- for Actavis?
 8 A. Like I say --
 9 MS. WELCH: Objection to form.
 10 A. -- OptiSource --
 11 MS. WELCH: Sorry.
 12 THE WITNESS: That's all right.
 13 A. Again, it's regional wholesaler
 14 or regional distributor. So they would
 15 have other pharmacies.
 16 So again, the space is you've
 17 got -- everybody knows CVS, Walgreens,
 18 Wal-Mart, all that stuff, but most of the
 19 prescriptions or most of the pharmacies
 20 are called independent, and they may or
 21 may not buying their -- getting supplied
 22 their pharmaceuticals from one of the big
 23 three, Amerisource, Cardinal, McKesson.
 24 They may also get them from some of these

1 whatever it says. The pharmacist has the
 2 power, the decision as to what to
 3 dispense. And, of course, if our
 4 product's not in that pharmacy, then our
 5 product doesn't get dispensed.
 6 Q. So, is it your understanding
 7 then that OptiSource would be doing a
 8 fentanyl patch telemarketing program to
 9 pharmacies or to prescribers?
 10 A. Definitely not to prescribers.
 11 They do not contact -- again, prescribers
 12 are physicians.
 13 If anything, this, again, a
 14 telemarketing program, my read of this,
 15 again it's from Mike Dorsey. My read of
 16 this is is that we were providing
 17 information to OptiSource and maybe paying
 18 for some program for OptiSource to let
 19 their member companies, their affiliated
 20 pharmacies know that our product was
 21 available in 2011.
 22 Q. And a little further down
 23 there's a reference to oxymorphone and a
 24 McKesson promotion. And again it states:

1 Telemarketing and online will start next
2 week. Cardinal exploring program. NC
3 mailing Morris Dixon.

4 Do you see that?

5 A. Mm-hm.

6 Q. So, my read of that is McKesson
7 was engaged in a telemarketing and online
8 marketing program for oxymorphone on
9 Actavis's behalf.

10 Is that your understanding?

11 MS. WELCH: Objection to form.

12 A. It reads: Oxymorphone McKesson
13 promotion telemarketing online will start
14 next week.

15 So, again, McKesson is a
16 significant wholesaler. They have
17 multiple, multiple pharmacies that are
18 part of the Progen generics program, is
19 what they called it then. So, it would
20 appear that we contracted with McKesson to
21 provide to their -- their affiliated
22 pharmacies through their internal system
23 or network or T.V. or email system or
24 whatever some sort of notification of

1 availability of our product. That's
2 what -- that's what that means to me. And
3 that was common practice.

4 Q. And, what does NC mailing refer
5 to? Do you know?

6 A. NC is -- actually I think it's
7 NC Mutual. It was another -- it was, one
8 of the, again, another regional wholesaler
9 distributor. So there must have been some
10 sort of mailing. So, again, we may have
11 paid for some thing for an NC Mutual to
12 then send the Actavis sell sheet or some
13 approved material to their affiliated
14 pharmacies.

15 Q. On -- on the page just prior
16 there's a reference about a quarter of the
17 way down to oxycodone and it states: Will
18 supply key accounts through the end of the
19 year based on historical demand. Do not
20 share with anyone that we received our Q4
21 allocation for oxycodone.

22 Do you see that?

23 A. Yep.

24 Q. Why was it important not to

1 share with anyone that you had received
2 your Q4 allocation for oxycodone?

3 A. So, as you're well-aware,
4 oxycodone is a scheduled narcotic, a Class
5 II. So, in order to manufacture your
6 approved product, you need both FDA
7 approval and you need DEA quota.

8 The way DEA quota works is every
9 company that sells controlled substances
10 provides a forecast well in advance. The
11 DEA reviews that forecast, has to -- with
12 justification for your request for the
13 following year, which is based on your
14 historical prescriptions, your historical
15 sales out, any potential new product
16 activity. You submit that to the DEA
17 usually the first quarter of the calendar
18 year. The DEA reviews it, assesses the
19 market, looks at your inventory levels,
20 looks at your history, and sometimes
21 somewhere towards the end of the year,
22 usually it can be as late as the end of --
23 like literally 29th of December, you will
24 get a letter from the DEA authorizing your

1 quota for the following year. That quota
2 enables you then to purchase the raw
3 material, in this case it would be
4 oxycodone, from the API suppliers who
5 produce that, companies like Mallinckrodt
6 and Cambrex and others who make controlled
7 substances, which again it's a very, very
8 tightly controlled, all organized and
9 controlled by the DEA. And what happens
10 sometimes, given the multi -- multi-source
11 nature of generic pharmaceuticals, given
12 other folks who may or may not have also
13 approved products who may have overbuilt
14 or underbuilt or had a production issue,
15 had a quality issues, sometimes people run
16 out of their quota. You can't -- you
17 can't buy any of the following year's
18 quota early. You can't place even an
19 order for the following year's quota until
20 you have the actual DEA authorization.
21 So, what sometimes happened, I think this
22 is what this is in reference to, is when
23 people run out of quota, and of course
24 which means the manufacturers run out of

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1 their quota and they're used to supplying
2 a Cardinal or a CVS, Cardinal or CVS looks
3 somewhere else for it.

4 I believe what -- 'cause I
5 remember these sorts of conversations. We
6 wanted to make certain that we were
7 appropriately supplied so in the event
8 that somebody else ran out, we could
9 supply and utilize as an opportunity for
10 potentially a better transfer price to the
11 customer, if we didn't have them on our
12 accounts. We had contracted accounts and
13 then accounts that weren't contracted. If
14 somebody else ran out, they would come to
15 us, and we would sell at a different price
16 point.

17 Q. So, why would it be a secret
18 that you had received your allocation for
19 oxycodone? Wouldn't that be something
20 that you would want to make known to the
21 customers?

22 MS. WELCH: Objection to form.

23 A. Absolutely not.

24 Q. Why?

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1 multi-source market.

2 Q. For the customer clients that
3 you had marketing agreements with, like
4 McKesson or some other regional ones that
5 we just looked at, did Actavis review the
6 materials that were used for marketing by
7 those companies?

8 MS. WELCH: Objection to form.

9 A. Well, if those companies were
10 sending their own materials out, then no.
11 At least not that I'm aware of. If we
12 provided information to those companies,
13 then yes, 'cause it would have gone
14 through our review and approval.

15 Q. And to the extent they were
16 doing telemarketing on your behalf, who
17 would have created those scripts? Actavis
18 or the company doing the telemarketing?

19 MR. DIAMANTATOS: Objection to
20 form.

21 MS. WELCH: Objection to form;
22 foundation.

23 MR. DIAMANTATOS: Calls for
24 speculation.

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1 A. Because it's in limited supply.
2 So if it's in limited supply, then
3 therefore the customer would be willing to
4 pay more for it.

5 Q. I see.

6 On the first page in the first
7 line there's a reference to: Any ability
8 to drive more fentanyl at MHA based on the
9 contracting data provided by Mike M?

10 Do you know what MHA refers to?

11 A. Again, MHA is another account.
12 I don't know what the acronym stands for,
13 but another, again, regional wholesaler or
14 distributor.

15 Q. And, so, you were asking if
16 there was ability to drive -- to sell more
17 fentanyl to MHA? Is that what the
18 question is here?

19 A. To provide, yes, to -- to
20 possibly sell into or have MHA take
21 more -- again, there's multiple suppliers
22 of fentanyl in 2011, generic. This is,
23 again, FDA-approved generic. There were
24 five or six different players. It was a

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1 A. Yeah, I don't -- I don't know.

2 I mean, again, you talk about
3 telemarketing. My recollection of these
4 sorts of things is an email or a fax or
5 maybe a call to the -- to the pharmacies
6 in their chain to acknowledge that this
7 product was available. That's what the
8 telemarketing was. There was no medical
9 claims. There was no -- it was -- again,
10 it was business to business. It was the
11 wholesaler or the distributor to its
12 aligned pharmacies.

13 Q. Would you have reviewed those
14 scripts?

15 A. No.

16 Q. Those scripts that were used for
17 purposes of telemarketing?

18 A. From --

19 MS. WELCH: Objection to form.

20 A. Potentially from one of our
21 customers to their affiliated pharmacist?

22 Q. Yeah, which you were contracting
23 with your customers for.

24 A. I -- what was that last part?

1 Q. So, if you entered into a
2 contract with one of your customers, like
3 McKesson, to do telemarketing of one of
4 your products, would you personally have
5 reviewed the scripts that they were using
6 as --
7 A. No.
8 Q. -- part of that telemarketing?
9 A. Me personally, no.
10 Q. Okay. Would your marketing
11 department have reviewed those scripts, if
12 you know?
13 MS. WELCH: Objection;
14 foundation.
15 A. I don't know. Possibly, but I'm
16 not sure.
17 Q. Can you identify all the
18 organizations that Actavis would have used
19 to market or promote its drugs, that you
20 can think of right now?
21 MR. DIAMANTATOS: Objection to
22 form.
23 MS. WELCH: Objection to form.
24 MR. DIAMANTATOS: Time.

1 marketing services that McKesson -- we pay
2 McKesson for them to communicate to its
3 member affiliate companies that our
4 product was available.
5 Q. And that would have come out of
6 your --
7 A. And that's --
8 Q. Sorry. Go ahead.
9 A. No. If that's what you mean by
10 marketing, that would be yes.
11 So, if you look at all the
12 available licensed DEA-approved
13 distributors and wholesalers, Cardinal,
14 McKesson, AmerisourceBergen, there's many,
15 many smaller ones, direct chains like
16 Wal-Mart, Walgreens, Rite Aid, CVS,
17 Express Scripts, Medco, those are the
18 firms that we contracted with for
19 distribution of our FDA-approved
20 medicines.
21 Q. But I'm not asking specifically
22 about distribution. I'm asking more about
23 marketing.
24 So, I've seen, for example,

1 A. Can you repeat the question,
2 please?
3 Q. Can you identify all the
4 organizations that Actavis would have used
5 to market or promote its drugs, that you
6 can think of right now, its opioid drugs?
7 MS. WELCH: Objection to form.
8 A. The -- the -- sorry. One more
9 time.
10 Just the firms that --
11 Q. The organizations that Actavis
12 would have used, perhaps contracted with,
13 to do marketing for its opioids.
14 MR. DIAMANTATOS: Objection.
15 MS. WELCH: Same objection.
16 A. Again, we didn't market our
17 generic products. I think these questions
18 are all about when we would enter into a
19 contract for distribution of our
20 FDA-approved medicines with DEA and
21 FDA-approved supply -- distributors, such
22 as McKesson, there would be a contract
23 price that determined the transfer price.
24 We may have also then contracted for

1 marketing agreements that you had with
2 McKesson. They're separate. They're
3 separate or they might be a component of
4 the overall agreement with McKesson, but
5 it's specific to marketing.
6 I'm just wondering what other
7 types of organizations, apart from perhaps
8 big distributors, you engaged to help with
9 promotion or marketing. We've talked
10 already about, on the brand name side,
11 we've talked about inVentiv.
12 Are there any others that you
13 can think of as you sit here right now?
14 MS. WELCH: Objection to form.
15 MR. DIAMANTATOS: Objection to
16 form.
17 A. It would certainly be helpful if
18 you provide me a document, something to
19 review.
20 Q. Sure.
21 I'm just asking for your best
22 recollection right now as to --
23 A. And my best recollection --
24 Q. You can't think of any?

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1 A. -- in January of 2019 for
2 facilities back in 2012, I'd be refreshed
3 if you have a document that you can share
4 with me. I've provided you, to the best
5 of my recollection, my understanding.

6 Q. Okay. So you can't think of any
7 right now, right?

8 MS. WELCH: Objection to form;
9 misstates his testimony.

10 MS. BAIG: Well, he hasn't
11 actually told me whether he can think
12 of any or not. He's just told me that
13 he won't answer without a document.

14 THE WITNESS: I told you.

15 BY MS. BAIG:

16 Q. I would just like to know if you
17 can actually recall any right now.

18 A. I specifically recalled
19 Cardinal, McKesson, AmerisourceBergen,
20 Walgreens, Rite Aid, Wal-Mart, Express
21 Scripts, Medco.

22 I think that's a pretty good
23 list from a recollection without any
24 specific materials in front of me.

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1 Q. Okay. Any marketing companies?

2 MR. DIAMANTATOS: Objection to
3 form.

4 MS. WELCH: Objection to form.

5 BY MS. BAIG:

6 Q. Specific, you know, marketing
7 companies that are solely devoted to
8 marketing?

9 MR. DIAMANTATOS: Objection to
10 form.

11 MS. WELCH: Objection to form.

12 BY MS. BAIG:

13 Q. As opposed to big distributor or
14 small distributors?

15 A. No.

16 MR. DIAMANTATOS: Objection to
17 form.

18 MS. WELCH: When you're at a
19 good point, can we take a five minute
20 break?

21 MS. BAIG: Sure. Why don't we
22 do that now.

23 THE VIDEOGRAPHER: We're going
24 off the record.

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1 The time is 2:39 p m.
2 (Recess taken.)

3 THE VIDEOGRAPHER: We're going
4 back on the record.

5 The time is 2:53 p m.

6 MS. BAIG: All right. Let's
7 have this document marked as the next
8 exhibit.

9 This is Bates stamped 01474262
10 through '4451.

11 (Boothe Exhibit 17, Adjudicated
12 Discount Coupon Program Agreement,
13 Bates No. ALLERGAN_MDL_01474262 to
14 01474331, was marked for
15 identification, as of this date.)

16 THE WITNESS: It's stamped on
17 the wrong side, but it's okay. I
18 think it is.

19 MS. WELCH: It's clipped.

20 It starts with '4262, correct?

21 MS. BAIG: Yes.

22 BY MS. BAIG:

23 Q. The document at the top of the
24 third page states it's the executed

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1 version of Adjudicated Discount Coupon
2 Program Agreement, and it appears to be
3 between Triple i Division of Medimedia
4 U.S.A. and Actavis Kadian LLC.

5 A. This is a different agreement.

6 THE WITNESS: There are multiple
7 agreements here.

8 MS. WELCH: That's what I'm
9 wondering.

10 Is this a compiled exhibit of
11 multiple agreements? We're just
12 trying to understand what it is.

13 MS. BAIG: My understanding is
14 that this was produced as one
15 document.

16 MS. ANTULLIS: It was produced
17 as a family of documents. Looking at
18 the first page, I assume it connects
19 them.

20 BY MS. BAIG:

21 Q. So, if you look at, actually,
22 the second page of the exhibit, there's a
23 list of documents.

24 Do you see that?

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1 A. This (indicating)?
 2 Q. Yes.
 3 A. Yeah.
 4 Q. Okay. And my understanding is
 5 this is an agreement between Actavis and
 6 Medimedia with respect to the coupon
 7 program for Kadian.
 8 Is that your understanding?
 9 MS. WELCH: Objection to form.
 10 And, are you talking about a
 11 portion of the exhibit now?
 12 MS. BAIG: I'm talking about the
 13 discount coupon program agreement on
 14 page 2.
 15 A. Yeah, it only goes to '287.
 16 Then you've got other agreements that are
 17 different companies and different things.
 18 Q. All right. So, let's start with
 19 this discount coupon program agreement.
 20 A. Okay.
 21 Q. Well, actually let's back up and
 22 look at the index.
 23 Do you have an understanding as
 24 to why all these documents would be

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1 then when I did sign things, I signed this
 2 one in March of 2009, then I may or may
 3 not have kept a hard copy, but generally
 4 the document of record legal would have
 5 because they would have all the executed
 6 signatures. Sometimes you'd sign them
 7 somewhere and the other party would sign
 8 them somewhere else and they would keep
 9 the integrated signature page.
 10 So, again, I don't know why
 11 these are all together 'cause this is
 12 something and this is something and this
 13 is something and you got travel policy
 14 here. And I haven't even dug down to the
 15 bottom, so.
 16 Q. No, I understand. These were
 17 produced by your counsel as a family of
 18 documents. I assumed that they were
 19 produced that way because there's one page
 20 at the front which -- which indexes a
 21 number of them, so maybe it was a
 22 particular file from -- these documents
 23 were all, for the most part, produced from
 24 your custodial file. So why they were

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1 grouped together, or no?
 2 A. From what I've seen the first
 3 four, no.
 4 Q. Okay. Did you have a file at
 5 Actavis that kept all -- all agreements
 6 together? Maybe a hard copy file?
 7 A. Me? No.
 8 Usually the -- all our -- I may
 9 have kept specific agreements hard copy,
 10 but generally any signed agreement, if you
 11 see here you see like a legal stamp.
 12 My practice was I wouldn't sign
 13 any agreement, by the way, unless there
 14 was a legal stamp on it and the sign.
 15 So like this one here has the
 16 legal stamp (indicating.)
 17 Q. Which page number are you
 18 looking at?
 19 A. It's Bates '4275. This is,
 20 again, relates to this Triple i agreement.
 21 Q. Okay.
 22 A. So, my practice was I wouldn't
 23 sign anything unless there was a legal
 24 stamp on it and initials in there. And

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1 organized the way they are, I'm not
 2 entirely sure, but they were produced all
 3 together.
 4 In any event, let's start with
 5 the first one, the Adjudicated Discount
 6 Coupon Program Agreement. And this was an
 7 agreement, my understanding, correct me if
 8 I'm wrong, is that this was an agreement
 9 with Medimedia - we touched upon it a
 10 little bit earlier - with respect to the
 11 coupon program for Kadian.
 12 Is that your understanding?
 13 A. This looks like it's both a
 14 telemarketing physician outreach program,
 15 as well as then the pharmacy e-blast, a
 16 discount coupon, web coupons, program
 17 execution discount coupon. So it's more
 18 than -- it was a agreement with Triple i
 19 that covered several different marketing
 20 programs.
 21 Q. Okay. And, if you turn -- and
 22 you signed this agreement, correct, on
 23 March 18th, 2009?
 24 A. I signed, yeah, through --

<p style="text-align: right;">Page 289</p> <p>1 through page 12, and I didn't check to see</p> <p>2 if all the exhibits were referenced,</p> <p>3 but --</p> <p>4 Q. Okay. And, if you look at</p> <p>5 Exhibit A of this agreement, it's entitled</p> <p>6 "Executive Summary."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And there's a section</p> <p>10 called "Program Overview."</p> <p>11 Do you see that?</p> <p>12 A. Yep.</p> <p>13 Q. And it references a physician</p> <p>14 outreach program, a pharmacy email blast,</p> <p>15 discount coupons, web coupon, project</p> <p>16 flow, program execution, discount coupon -</p> <p>17 up to \$50 off each prescription.</p> <p>18 And those appear to be the key</p> <p>19 marketing services that are being included</p> <p>20 here.</p> <p>21 Would you agree?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And, under the "Physician</p> <p>24 Outreach Program," first bullet it states:</p>	<p style="text-align: right;">Page 290</p> <p>1 A file of 9,000 physicians with phone</p> <p>2 numbers will be provided by Actavis.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And that would come from the IMS</p> <p>6 data?</p> <p>7 A. It may have come from there,</p> <p>8 Wolters Kluwer, or some database that had</p> <p>9 physician contact information. There's</p> <p>10 multiple vendors who provide that.</p> <p>11 Q. Was ValueTrak one of them? Or</p> <p>12 ValueCentric?</p> <p>13 A. I don't know.</p> <p>14 Q. And, the third bullet underneath</p> <p>15 the "Physician Outreach Program" states:</p> <p>16 Triple i customer service representatives</p> <p>17 will be trained on the approved call</p> <p>18 script provided by Actavis.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. So your understanding is that</p> <p>22 Actavis provided Triple i with the script?</p> <p>23 MS. WELCH: Objection;</p> <p>24 foundation.</p>
<p style="text-align: right;">Page 291</p> <p>1 A. Will be trained on the approved</p> <p>2 call script provided by Actavis. That's</p> <p>3 what it says.</p> <p>4 Q. And the next bullet states:</p> <p>5 Each physician in the physician file will</p> <p>6 receive a phone call from a CSR to</p> <p>7 communicate the following.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And it's: Acquisition of Kadian</p> <p>11 by Actavis, launch of new Kadian POS</p> <p>12 coupon program, and any additional program</p> <p>13 related to the product which Actavis has</p> <p>14 assumed and chosen to continue.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what additional</p> <p>18 programs are being referred to there?</p> <p>19 A. No.</p> <p>20 Q. And it appears under the</p> <p>21 pharmacy email blast section that: 43,300</p> <p>22 pharmacies and stores will receive an</p> <p>23 email blast at the launch of the point of</p> <p>24 sale coupon program to introduce the new</p>	<p style="text-align: right;">Page 292</p> <p>1 Kadian point of sale coupon program.</p> <p>2 Correct?</p> <p>3 A. That's what it says.</p> <p>4 Q. And would Actavis be providing</p> <p>5 the 43,000 pharmacies to Medimedia, or</p> <p>6 would it be the other way around? Do you</p> <p>7 know?</p> <p>8 MS. WELCH: Objection;</p> <p>9 foundation.</p> <p>10 A. I don't know.</p> <p>11 Q. But Actavis certainly had the</p> <p>12 data to provide the 43,000 pharmacy</p> <p>13 stores, correct?</p> <p>14 A. No. I think it's actually that</p> <p>15 they had a list of the pharmacies.</p> <p>16 Q. You don't think that Actavis had</p> <p>17 pharmacy level data?</p> <p>18 A. For what?</p> <p>19 Q. Pharmacy level -- to target</p> <p>20 pharmacies to receive this coupon pro --</p> <p>21 this coupon.</p> <p>22 A. No.</p> <p>23 MS. WELCH: Objection to form.</p> <p>24 A. I don't believe we did. I don't</p>

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1 think we kept a record of pharmacies.

2 Q. You don't believe that Actavis
3 had a record of -- you don't believe that
4 Actavis had data which would allow it to
5 target certain pharmacies?

6 A. I don't believe so.

7 MS. WELCH: Objection to form.

8 A. Again, we didn't sell to
9 individual pharmacies. Our product would
10 be distributed to FDA-approved and
11 DEA-licensed wholesalers or direct chains.
12 We didn't really distribute product at an
13 individual pharmacy level. That doesn't
14 mean we didn't have access to lists of
15 pharmacies or, again, who were the member
16 pharmacies of the various regional
17 distributors.

18 I mean, obviously if a CVS, I
19 mean, CVS stores are all -- this is, by
20 the way, way before the advent of Google
21 Maps, I'm sure, but there are folks who
22 had lists of physical locations and many
23 of the distributors, and that was one of
24 their -- one of their selling points is

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1 they had access to all the individual
2 pharmacies.

3 So, I don't think in the normal
4 course of Actavis's business did we keep
5 an active or -- list of pharmacies.

6 Q. I see. But you received data
7 from another entity.

8 Is that right?

9 MS. WELCH: Objection to form.

10 A. Received what data?

11 Q. Data with -- with respect to the
12 pharmacies to be able to target
13 pharmacies.

14 MS. WELCH: Objection to form.

15 A. I read this that Triple i was
16 sending out the blast. We didn't send
17 them out. So Triple i must have had or
18 they had their access to those pharmacies.
19 I'm not certain.

20 It doesn't appear to me that
21 they provided us that list, but I'm not
22 certain. I don't think that they did.

23 Q. And you don't believe that
24 Actavis could have a list of highest

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1 dispensing pharmacies from Wolters Kluwer
2 or IMS or any other data-providing
3 organization?

4 MS. WELCH: Objection to form;
5 calls for speculation.

6 MR. DIAMANTATOS:
7 Mischaracterizes the witness's
8 testimony.

9 A. I'm not aware if they had those
10 services or if we contracted for them.

11 Usually the Wolters Kluwer data
12 would be at a physician level, not at a
13 pharmacy level, but they may have had that
14 service. We may have contracted for it.
15 I don't know if we did or we didn't.

16 Q. Okay.

17 A. If we had a list of pharmacies,
18 why would we use Triple i to then send
19 faxes to them? We could send them
20 ourselves potentially. But I don't think
21 we had a list of pharmacies.

22 Q. Well, you had the list of
23 physicians and you're still using Triple
24 i. I had the same question.

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1 Why didn't you just send it
2 yourself?

3 A. Well, again, this is to have a
4 customer service representative call. So
5 we contracted with Triple i to have their
6 customer service representatives call,
7 which takes effort, and we paid them a
8 per-call amount, rather than use our
9 own -- we didn't have an outbound
10 organization.

11 Q. And, do you know whether, after
12 Medimedia sent the email blast to the
13 43,300 pharmacies, whether Actavis had a
14 list of which pharmacies received that
15 email blast?

16 MS. WELCH: Objection to form;
17 foundation.

18 A. No. I mean, did they send us a
19 little -- you know, back in the days, I
20 mean, who faxes now, but that little fax
21 confirmation receipt page? I don't know
22 if they did or didn't send it back to us.
23 I have no idea.

24 Q. And under "Discount Coupons" it

1 states: A list of physicians to be
 2 included in the point of sale coupon
 3 program will be provided by Actavis with
 4 the assistance of Triple i.
 5 Do you see that that?
 6 A. Yes.
 7 Q. And 280,000 discount coupons
 8 will be assembled into 28,000 units of 10.
 9 Correct?
 10 A. Yes.
 11 Q. And each pack of 10 discount
 12 coupons will contain a re-order business
 13 reply card.
 14 Do you see that?
 15 A. Yes.
 16 Q. Do you know what a re-order
 17 business reply card is?
 18 A. I could speculate, but no, I
 19 don't know exactly what that is.
 20 Q. Do you have a general idea of
 21 what that is, or no?
 22 A. It's probably a index card that
 23 has a self-addressed stamp or whatever,
 24 like a post thing, and probably you fill

1 coupon?
 2 A. That's how I read it.
 3 Q. And then a few pages down you
 4 see the final coupons.
 5 Is that right?
 6 A. What page?
 7 Q. The one ending in '283 and '284.
 8 A. These are illustrative or
 9 illustrations of it.
 10 I see FPO, so that means it's
 11 obviously not the final. This is just a
 12 placeholder for -- FPO is for placement
 13 only, I believe.
 14 Q. So you don't know whether these
 15 were the final or not?
 16 A. Well, again, this is a
 17 presentation deck. I mean, the final were
 18 actual physical coupons. So this would
 19 never be the final.
 20 Q. Sure.
 21 It says at the top "Hard copies
 22 to be provided."
 23 But, I guess my question is do
 24 you know whether the hard copies were

1 in your information and you mail it back
 2 and potentially that's what would -- you
 3 mail it back to Triple i and if they're on
 4 the list, they'll send them more cards,
 5 potentially. That's how I read that.
 6 Q. They'll send them more discount
 7 coupons, correct?
 8 A. Correct.
 9 Which is, I think, a card,
 10 right?
 11 Q. And 10,000 discount coupons were
 12 placed into inventory for fulfilment of
 13 physician requests.
 14 Correct?
 15 A. Yes, that's what it says.
 16 Q. And then with respect to the web
 17 coupon, do you have an understanding of
 18 what the web coupon was?
 19 A. It says: Set up a coupon
 20 landing page for a printable one-page
 21 coupon that offers up to \$50 off the
 22 patient's out-of-pocket expense.
 23 Q. So, did that mean that a patient
 24 could go to the Internet and print out the

1 identical to what's here?
 2 A. No.
 3 Q. No, you don't know?
 4 A. I don't know.
 5 Q. Okay. And, if you turn the next
 6 page, there's something titled "Kadian
 7 2009 In-Bound Calls Coupon NDC Utilization
 8 Report."
 9 What does this show?
 10 MS. WELCH: Objection;
 11 foundation.
 12 A. Well, it's -- it's reading that
 13 drug name, forms strength NDC,
 14 redemptions, NDC expense, coupon.
 15 This looks to be a --
 16 essentially what happened was we provided
 17 the coupons, and so when the patients went
 18 with their prescription that the doctor
 19 had written to the pharmacy to get their
 20 prescription filled, then they would use
 21 the coupon and so they would get \$50 off
 22 their co-pay at the pharmacy level. If
 23 the co-pay was \$50. If it was less than
 24 \$50, it would be free to them. If it was

<p style="text-align: right;">Page 301</p> <p>1 more than \$50, it would be whatever their 2 co-pay was minus the 50. 3 And this is essentially Triple i 4 was administering the program, would then 5 get information at the pharmacy level so 6 they could then basically pay the pharmacy 7 back for the \$50 or whatever the amount 8 was that was the coupon. So that way the 9 pharmacy is whole in the process. 10 Q. I see. So in the right-hand 11 column where it says "Total paid to 12 pharmacy," that's Actavis's payment to the 13 pharmacy to make them whole for the \$50 14 coupons that were used? 15 A. That was Triple i's payment to 16 the pharmacies for the program that we 17 contracted for them to administrative. 18 Q. Okay. 19 A. Which we paid Triple i for, so. 20 Q. Okay. 21 A. We didn't directly pay a 22 pharmacy. We, Actavis, did not directly 23 pay a pharmacy. 24 Q. And if you turn the page, it</p>	<p style="text-align: right;">Page 302</p> <p>1 looks like it's the beginning of a new 2 agreement. It says "Supply Agreement." 3 Do you see that? 4 A. Yes. 5 Q. And, who is Noramco Inc.? 6 A. Let me just look at the 7 agreement here briefly. 8 (Perusing document.) 9 A. So, Noramco, in this agreement 10 here, Noramco is a raw material supplier, 11 what was called an API supplier. So a 12 DEA-licensed, FDA-approved supplier of raw 13 materials. In this instance, it's 14 morphine sulphate, so the active 15 ingredient in both branded Kadian and 16 generic Kadian or other generic morphine 17 products, potentially. This -- and they 18 were our raw material supplier for, don't 19 know if it says the specific drug in here 20 or not. 21 It says morphine sulphate. 22 Q. If you move forward a few more 23 pages, you get to a new agreement. It's 24 called "Contract Sales Force Agreement by</p>
<p style="text-align: right;">Page 303</p> <p>1 and between inVentiv Commercial Services 2 LLC and Actavis Kadian" dated May 1st, 3 2009. 4 Do you see that one? 5 A. Yep. 6 MS. WELCH: Is that '304 at the 7 bottom? 8 MS. BAIG: Yes. 9 BY MS. BAIG: 10 Q. And this is the agreement with 11 respect to your use of the inVentiv 12 sales -- sales reps that we discussed 13 earlier? 14 A. Yes. 15 Q. And, if you turn to page 3 16 there's a definition of prescribers or 17 targeted prescribers. 18 Do you see that? 19 A. Yeah. 20 Q. And it states that: Prescribers 21 or targeted prescribers shall mean as 22 identified by Actavis, 1, medical doctors 23 and doctors of osteopathy that are primary 24 care physicians, i.e. internal medicine</p>	<p style="text-align: right;">Page 304</p> <p>1 practitioners, family practitioners and 2 general practitioners, pain specialists, 3 podiatrists, orthopedic specialists, 4 physical medicine and rehabilitation 5 specialists, neurologists and 6 anesthesiologists; and, 2, other health 7 care professionals or paraprofessionals as 8 indicated by Actavis from time to time 9 that are legally authorized to write 10 prescriptions for the product located in 11 the territory pursuant to applicable laws. 12 Do you see that? 13 A. Yes. 14 Q. And the product at issue is 15 Kadian. 16 Is that right? 17 A. Branded Kadian, yes. Morphine 18 sulphate extended-release, the brand, yes. 19 Q. So, these were the types of 20 prescribers that were being targeted by 21 the sales force. 22 Is that your understanding? 23 MS. WELCH: Objection; form. 24 A. Yes.</p>

1 Q. If you keep going many or pages
2 until you get to the one Bates stamped
3 01474358.

4 A. '358. Okay.

5 Q. It's an Exhibit C-1 to the
6 inVentiv agreement stating "Performance
7 Compensation Plan."

8 Do you see that?

9 A. Okay.

10 Q. And it states: 2009 Kadian Area
11 Business Manager Incentive Compensation
12 Program.

13 Correct?

14 A. Yep.

15 Q. Who is this an incentive
16 compensation plan for? Do you know?

17 A. Well, again, the -- so, now, ABM
18 stands for area business manager. I think
19 you asked that on an earlier chart.

20 So, the -- the resources we were
21 contracting with inVentiv, their -- the
22 sales team were either area business
23 managers or some -- so these would be the
24 folks who were calling on the physicians.

1 prescriptions written by their targeted
2 physicians.

3 Q. Okay. I think that's it on the
4 next page.

5 Do you see on the next page
6 where it says: Table 1 Kadian ABM payout
7 versus percent to goal?

8 A. Okay.

9 Q. Is that what you're referencing?

10 A. Yes.

11 Q. Okay. And if you turn to the
12 page that's Bates stamped '381 at the end
13 of the Bates stamp.

14 Well, actually, you need to move
15 forward to '372, please. There's a
16 document that's titled "Patient Assistance
17 Program Agreement."

18 Do you see that?

19 A. Yep.

20 Q. Can you tell me what a patient
21 assistance program is?

22 A. I'm just looking at this as
23 well, just so I make myself familiar with
24 it.

1 This would be their incentive compensation
2 program.

3 Q. And I think this is in line with
4 what you testified to earlier where it
5 says halfway through: No bonus will be
6 earned until 85 percent of quota has been
7 met.

8 Is that right?

9 A. That was a different -- you were
10 asking me more about how corporate bonuses
11 were paid. Bonuses for me.

12 This is, again, this is for the
13 act -- the contracted sales
14 representatives that we contracted with
15 through inVentiv. So, again, they had a
16 base salary and they had the opportunity
17 to earn up to looks like \$20,000. So
18 again, if I look at the mix, they were
19 probably -- it's probably in here
20 somewhere, whatever their actual salary
21 is, and then this potential bonus
22 component, subject to performance of --
23 performance against the quota. The quota
24 here defined as some level of

1 (Perusing document.)

2 Okay. I mean, I -- not that
3 it's material, but the document says
4 February 1st and my signature was
5 September 1st. But that's another point.

6 But, a patient assist -- so, as
7 I mentioned before in my testimony, so, a
8 patient assistant program is a common
9 technique that pharmaceuticals companies
10 utilize to provide access for our
11 FDA-approved legally-dispensable product
12 for those patients that may not have
13 insurance, may be below a certain
14 financial income level. Sometimes it's
15 two Xs to Medicaid. So patients that may
16 be prescribed this product that fall below
17 a certain level are eligible to receive
18 either subsidized or free or much lower
19 priced product than those who apply for
20 and are deemed eligible for the patient
21 assistance program. That's not the same
22 as the coupon program, which is a discount
23 off with a co-pay which, again, would be
24 for another -- you know, other patients

1 who have been prescribed legally our
2 FDA-approved product by the licensed
3 physician.

4 Q. And, why did Actavis offer a
5 patient assistance program?

6 A. 'Cause it was the belief of our
7 company, and I think a belief of most
8 branded ethical pharmaceutical companies,
9 to provide access to all our medicines
10 even if the patient can't afford it,
11 subject to certain financial criteria,
12 income criteria and other eligibility.

13 Q. So, Actavis didn't profit off of
14 the patient assistance program?

15 MR. DIAMANTATOS: Objection to
16 form.

17 A. I think the purpose of the
18 assistant program is it was free or it was
19 at a reduced cost.

20 Q. Do you know whether ultimately
21 Actavis would profit from patient
22 assistance programs?

23 MS. WELCH: Objection to form.

24 MR. DIAMANTATOS: Objection to

1 form.

2 A. Well, if the product was free,
3 then how -- it would be no. I mean, we
4 would -- we would -- it would be a loss,
5 actually.

6 Q. Unless it brought in new
7 customers that you expected to be paying
8 later. I don't know the answer to that.

9 I'm just asking whether there
10 was ever return on investment analysis for
11 patient assistance programs?

12 MR. DIAMANTATOS: Objection to
13 form.

14 MS. WELCH: Objection to form.

15 MR. DIAMANTATOS: Vague;
16 foundation; argumentative.

17 A. Again, I mean, I'm not aware of
18 any return on investment analysis, as you
19 described.

20 This was, again, this was a -- a
21 decision we made as a company, consistent
22 with others who also provide patient
23 assistance programs, to provide access to
24 our FDA-approved product that had a clear

1 and determined medical need that
2 physicians could prescribe.

3 Q. Was it considered part of
4 commercial development?

5 MS. WELCH: Objection to form.

6 A. What do you mean by commercial
7 development?

8 Q. Would it have fallen under
9 commercial development program?

10 A. Which means what?

11 MS. WELCH: Objection to form.

12 A. I don't understand what you mean
13 by commercial development program.

14 Q. Well, I'm just looking at the
15 page where it says "Terrence Fullem is the
16 VP of commercial development," and it
17 appears his name is on the patient
18 assistance program.

19 A. Well, again, Terry, or Terrence
20 Fullem was responsible for all activities
21 around the Kadian brand as part of his
22 multiple responsibilities. So, as I
23 testified earlier, he also had product
24 development, portfolio, corporate

1 development, business development, so.

2 Q. And, what does SOW refer to? Do
3 you know?

4 A. It's -- can you show me where it
5 is in the document?

6 Q. Yeah, on the page with the Bates
7 stamp 01474383.

8 A. Okay.

9 Q. It says at the top: Kadian
10 Capsules Patient Assistance Program SOW.

11 A. Sorry. Which Bates number
12 again?

13 Q. It ends in '383.

14 A. Okay. Well, the '382 says SOW,
15 or says statement of work. So I'm
16 assuming SOW probably means statement of
17 work.

18 Q. And it states just below that:
19 Estimated volume 100 to 150 new patients
20 per month.

21 Do you see that?

22 A. Yes.

23 Q. And the program duration was for
24 twelve months.

1 Do you see that?
2 A. Yeah.
3 I just want to familiarize
4 myself with this document since you're
5 diving in on it.
6 So, what's the question?
7 Q. This program was for twelve
8 months, according to this page?
9 A. Yes, that's what it says.
10 Q. Do you know whether it was
11 extended or whether the patient assistance
12 program for Kadian was longer than for
13 twelve months?
14 A. I have no reason to believe we
15 didn't continue it, but if you can show me
16 a document, I could confirm that.
17 Q. And this is the Triple i
18 division of Medimedia who is implementing
19 this program for Actavis.
20 Is that right?
21 A. Is that who's --
22 Q. I see Triple i referenced at the
23 top of page '384.
24 A. Okay. Yeah.

1 Q. And it goes on to state: This
2 Actavis patient assistance program would
3 be completely turnkey and would provide
4 program management and support in the
5 following areas: front end support to the
6 physicians calling in to enroll their
7 patients in the program, receiving
8 applications, validating and capturing
9 practitioner requests, and then providing
10 a personalized Actavis patient assistance
11 program acceptance letter with direct
12 shipment of Kadian to patient to follow.
13 The direct shipment will allow qualified
14 patients to receive their monthly
15 prescription directly shipped to their
16 home address for free.
17 Do you see that?
18 A. Yes.
19 Q. And, is that your understanding
20 of what the program involved?
21 A. These are the services that
22 Triple i is going to do on behalf of
23 Kadian as -- or, on behalf of Actavis as
24 part of this statement of work, yes.

1 Q. And, in connection with that,
2 Triple i was to design an Oracle database
3 to support the practitioner request.
4 Do you see that?
5 A. Yep.
6 Q. What is that?
7 A. What's an Oracle database?
8 Q. Mm-hm.
9 A. Sounds like a big spreadsheet,
10 but you'd have to ask folks who know
11 Oracle better.
12 Q. But you don't know what -- what
13 it -- what the purpose of the Oracle
14 database was in this context?
15 A. I think it's to capture the --
16 support the practitioner request. So, the
17 request came in, it went into this
18 database, and I'm sure there's validation
19 confirmation that it was a legitimate
20 physician, that they were licensed, that
21 blah, blah, you know, all those sorts of
22 things that would validate the request, as
23 well as whomever the patient is. I'm sure
24 there's some criteria for accepting the

1 patient into the program and that's why,
2 again, not an area of expertise for
3 Actavis. This is an area of expertise
4 that Triple i performed this services for
5 multiple pharmaceutical companies, and
6 there are lots of other potential
7 suppliers. That's who we opt -- I guess
8 we opted to pick of the available partners
9 for this. Lots of companies provide
10 patient assistance programs. So it's a
11 common program all throughout the
12 pharmaceutical space for -- to
13 counterbalance the high cost of branded
14 prescription products for the population
15 that's below a certain economic threshold,
16 income threshold.
17 Q. And it goes on to state that:
18 Triple i will provide live operator phone
19 coverage for physicians and patients
20 requesting Actavis patient assistance
21 program services.
22 Correct?
23 A. Yes.
24 Q. And, who would have written the

<p style="text-align: right;">Page 317</p> <p>1 scripts for those phone calls? Would that 2 come from Triple i, or would that come 3 from Actavis? 4 MS. WELCH: Objection to form; 5 foundation. 6 A. I don't know. And I'm not 7 certain what the scripts would be. 8 Yeah, I don't know. 9 Q. And on the next page, do you see 10 "Implementation and Assumptions"? 11 A. Which page? 12 Q. It ends in '386. 13 A. So you're skipping the page that 14 talks about the program overview? 15 Q. I think we talked about at least 16 a good part of it. 17 And, the program assumptions is 18 that there was an estimate of 19 approximately 100 to 150 new orders 20 processed monthly at the mail-order 21 pharmacy. There are also 1700 patients in 22 the current program. 23 A. That's what it says. 24 Q. Okay. A little further down it</p>	<p style="text-align: right;">Page 318</p> <p>1 states that: Patients will have Actavis 2 PAP program eligibility once approved for 3 twelve months but product will be limited 4 to a 30-day maximum supply at a time. 5 A. Yes. 6 Q. Did other organizations offer 7 patients -- patient assistance programs 8 for any of your opioid products for 9 Actavis? Do you know? 10 MR. DIAMANTATOS: Objection to 11 form. 12 MS. WELCH: Objection; form. 13 A. Could you just repeat that? 14 Q. Were there other organizations, 15 apart from Medimedia, that provided 16 patient assistance programs for Actavis? 17 A. I don't believe so. 18 Again, we had the rest of the 19 Actavis portfolio were all generic 20 products, which by nature are low-cost, 21 affordable, FDA-approved products. So the 22 only brand item that we had that was 23 promoted was Kadian and this was the 24 patient assistance program specifically</p>
<p style="text-align: right;">Page 319</p> <p>1 for that one branded product. 2 So I think the answer is no. 3 MS. BAIG: Let's have this 4 document marked as Exhibit 16. Sorry, 5 18. It's Bates stamped ACTAVIS1132528 6 through '530. 7 THE WITNESS: I think I messed 8 the order of this up a little bit. 9 MS. WELCH: It's all right. 10 THE WITNESS: If it matters. 11 MR. DIAMANTATOS: Don't worry 12 about it. 13 THE WITNESS: Yeah. Sorry. 14 (Boothe Exhibit 18, email dated 15 October 21, 2009, with attachment, 16 Bates No. ACTAVIS1132528 to 1132530, 17 was marked for identification, as of 18 this date.) 19 (Pause.) 20 BY MS. BAIG: 21 Q. It's an email from Norman 22 Stalsberg to you and Terry Fullem. 23 A. Yep. 24 Q. October 21st, 2009.</p>	<p style="text-align: right;">Page 320</p> <p>1 Who's Norman Stalsberg? 2 A. So, Norm, Norman or Norm, was 3 someone I knew. He worked for -- he 4 actually may have worked for inVentiv, but 5 he was a supplier of contracted services 6 for pharmaceutical companies. 7 Q. You mean in his capacity at 8 inVentiv? 9 A. I don't know if he was -- I 10 can't tell from the email if this -- where 11 he was at at the time. 12 Norm's someone I've known for 13 quite some time in the space. 14 Q. And, who is Gerard? There's a 15 reference to him in the first line. 16 A. I'm trying to figure that out 17 myself. There was a Gerard who worked at 18 Actavis. That may be him, but it's not 19 clear if that's that Gerard or a different 20 Gerard, or. 21 Q. Do you know what division Gerard 22 worked in at Actavis? 23 A. Gerard was in our -- Gerard 24 Farrell or Ferrell or something, he was in</p>

1 internal communications or customer --
 2 internal comms. He had a, again, a
 3 communications role. He wasn't involved
 4 in the marketing, selling, or he wasn't
 5 involved in the business, per se. He was
 6 at headquarters. That Gerard. But this
 7 could be a very different Gerard.

8 Q. Do you know who Chris --
 9 Christine Ballo is?

10 A. I know her as someone, again,
 11 back in my recollection is she works at
 12 inVentiv. So, at this time, this could
 13 have been Norm was at inVentiv and
 14 Christine Ballo was at inVentiv, and
 15 Gerard could have been at inVentiv as
 16 well. It's not clear from the email.

17 Q. In any event, Norman appears to
 18 be sharing with you that he got a copy of
 19 the raw physician file from Gerard and did
 20 some checking.

21 Do you see that?

22 A. Where do you read that?

23 Q. In the first line. Well, the
 24 second sentence of the first line.

1 A. Okay.

2 Q. He states: I got a copy of the
 3 raw physician file from Gerard and did
 4 some checking on my own.

5 Do you see that?

6 A. Mm-hm.

7 Q. Okay. And then he goes on to
 8 state: According to Gerard, the final
 9 targeting file for the 18 reps was 1,641
 10 high Kadian prescribers. The top 1,641
 11 prescribers actually account for 50.3
 12 percent of total Kadian volume. So I
 13 think your 91 percent pullback is a bit
 14 misleading.

15 Do you see that?

16 A. That's what he wrote.

17 Q. Do you know what he's referring
 18 to with respect to your 91 percent
 19 pullback?

20 A. It's this attachment at the end.

21 Q. You mean the Kadian physicians
 22 that are listed here?

23 A. No. This -- this page
 24 (indicating.)

1 Q. Okay. The page that says
 2 "Kadian monthly total prescriptions actual
 3 versus consultants predictions"?

4 A. Correct.

5 Q. I see.

6 And there's a line here that's
 7 marked "Actual (91 pullback.)"

8 Do you see that?

9 A. Yeah.

10 Q. What does that mean?

11 A. Well, again, so, there was a
 12 time where a third party came in to, and I
 13 think it was with inVentiv or some other
 14 group, to provide us a prospectus. When
 15 we acquired the asset, we didn't have any
 16 sales resources in the field, and we saw
 17 that decline in prescriptions faster than
 18 we had thought. That was -- I think we
 19 had talked about that earlier in the
 20 morning. So we engaged with a third party
 21 to give us a sense as to what, you know,
 22 what are the options for the company and
 23 the third party did a presentation, which
 24 again it got repurposed here, that said

1 anywhere basically if you're provided a --
 2 a hundred -- and so, pullback is 75
 3 percent reduction means if you took the
 4 number of sales reps that Alpharma had in
 5 the field, which at the time was like 400,
 6 and reduced it by 75 percent, this is what
 7 the consultants would have said that the
 8 expected trajectory of the scripts would
 9 happen, given the share of voice in the
 10 market space, the way the physicians
 11 respond to promotion, and then -- or 50
 12 percent or half or -- 75 -- 25 percent,
 13 which is three-quarters. As I mentioned
 14 before, we only had 18 people. So
 15 effectively, we had a 91 percent pullback.
 16 I don't know if you do the math between
 17 400 or whatever the number is and 18, but
 18 that number of -- of salesperson that we
 19 put in the field represented a 91 percent
 20 reduction from the previous level of
 21 support and promotion that this asset had
 22 gotten at Alpharma prior to us acquiring
 23 the asset.

24 And, so, this chart is basically

1 saying, well, it's basically saying that
2 with a 18-person sales organization, we
3 basically stabilized around 50,000
4 prescriptions.

5 Although, again, by the way,
6 this is dated in October and the chart
7 goes out through December. So some
8 portion of this is an approximation or an
9 estimate. I don't know what portion of it
10 is real or actual. You'd have to ask Mr.
11 Stalsberg for that.

12 Q. And when he states: It's
13 believed that Alpharma had Kadian in a P2
14 detailing position and a significant
15 number of low value Kadian prescribers in
16 their call list.

17 What is a P2 detailing position?

18 A. Position 2.

19 So, the way a sales organization
20 that has multiple products in its bag, as
21 they call it, or their -- a sales
22 representative is targeted with promoting
23 or providing information about multiple
24 branded products, FDA-branded approved

1 products, P2 would be the whatever amount
2 of time they had with the physician, their
3 first detail position would be the first
4 message that they were to give, and if
5 they had an opportunity to go into a
6 second one, that would be P2.

7 I read this email as Mr.
8 Stalsberg trying to justify some time
9 earlier, either -- maybe it was his
10 consultants who provided this information,
11 'cause our actual facts are showing a much
12 different outcome. So he's trying to
13 provide some justification for why either
14 him or his third party or some other group
15 provided that information which, as you
16 can tell from here, we didn't believe or
17 hold stock in and we went our own -- we
18 went our certain path.

19 That's how I read this and
20 that's my recollection of the -- the
21 background of the information.

22 Q. Okay. And he states that his
23 belief is that the current success that
24 Actavis was seeing could be attributed to

1 two things. One, the high value targets
2 mentioned above.

3 That would be the high
4 prescribers physician list.

5 Is that right?

6 A. Yep.

7 Q. 2, a P1 detailing position. And
8 3, ongoing volume carryover of currently
9 non-targeted physicians.

10 Is that consistent with your
11 understanding?

12 A. That's what he wrote.

13 Q. Did you have a different
14 understanding as to why you were seeing
15 success?

16 MS. WELCH: Objection to form.

17 A. Again, if I look at the data and
18 I remember the results, we -- we felt
19 very -- you know, with the commitment to
20 the resources and partnered with inVentiv
21 and the sales representatives that they
22 chose and how we aligned them towards the
23 high value or high prescribing physicians,
24 that these -- that these results were an

1 indication that we were operationally
2 effective.

3 And I'm tipping myself to a
4 95-plus percent confident Gerard was an
5 inVentiv employee because now I think I
6 might know who that person might be.

7 Q. Okay. Do you know his last
8 name?

9 A. I knew you were going to ask me
10 that.

11 No, but I think he's an inVentiv
12 employee, or was at the time.

13 MS. BAIG: Let's have this next
14 document marked as Exhibit 19. It's
15 ACTAVIS0822310 through '321. It
16 starts as an email from Natalie Leitch
17 to you and others. The subject is
18 "Response to Kadian return goods
19 policy."

20 (Boothe Exhibit 19, email dated
21 June 12, 2011, with attachment, Bates
22 No. ACTAVIS0822310 to 0822331, was
23 marked for identification, as of this
24 date.)

1 THE WITNESS: Okay.

2 BY MS. BAIG:

3 Q. Do you know who Chris Hepp is?

4 A. Yeah.

5 Q. Who's is that?

6 A. So, Chris was one of the
7 regional -- or, regional sales manager or
8 district sales managers.

9 So, I believe at this point, we
10 had expanded the Kadian sales team from
11 around 18, which was the initial number,
12 to around 60. So, in doing so, we put in
13 a layer of regional sales managers or
14 regional sales directors, and there were
15 four of them, and Chris was one of them.
16 He had the midwest, Chicago area-ish, or
17 maybe out to Denver, it looks like. Or
18 maybe he had the west. He had one of the
19 four territories.

20 Q. And in the last paragraph of the
21 first page it states: In the meantime,
22 I've had a look at ValueTrak data which
23 shows the units shipped to retail
24 locations for Kroger and Safeway.

1 According to fiscal year 2010 data, 8,715
2 units (bottles of 100s) were shipped to
3 these chains. This translates to about
4 13,000 prescriptions dispensed. I will
5 confirm with ValueTrak tomorrow that all
6 Kroger and Safeway locations are captured
7 in the above data so that we can have a
8 clear idea of the volume we're doing
9 through these chains.

10 Does this refresh your
11 recollection at all as to what type of
12 data you were receiving from ValueTrak?

13 A. I didn't say anything about what
14 kind of data we were receiving from
15 ValueTrak.

16 Q. Correction.

17 I think I asked you about
18 ValueCentric, and I think you said you
19 didn't recall. I could be wrong, but I
20 don't want to argue about it.

21 I'm just wondering if you know
22 anything about the data that Actavis was
23 receiving from ValueCentric or ValueTrak.

24 My understanding is that

1 ValueCentric is the company and ValueTrak
2 is the data provider.

3 A. I think ValueTrak came on at
4 some point, they had a service where they
5 would provide you data leveraging the EDI
6 about shipments to -- not to -- again, it
7 may be the specific location, but it
8 certainly was to specific trains -- chains
9 or accounts. It was actually something we
10 utilized both on the brand side, on the
11 generic sides, as a means to validate.

12 A big issue in the generic side,
13 it's called gross to net, or chargebacks,
14 which I don't -- I could spend the next
15 six hours of this deposition describing
16 how chargebacks work. But, effectively,
17 when you sell something into a -- into
18 a -- into a wholesaler, like a McKesson,
19 and they have a contract price with a
20 independent pharmacy who's in their
21 program, you sell it into McKesson at
22 what's called WAC, say it's a hundred
23 dollars, but you may have a contract price
24 with the direct pharmacy at \$30. So what

1 will happen is you'll sell it to McKesson
2 at a hundred gross, and then what happens
3 is when McKesson actually -- when the
4 order comes in from the independent
5 pharmacy into McKesson on the program and
6 McKesson ships it to the pharmacy, they
7 will -- they will basically charge you
8 back, charge back to Actavis, \$70, which
9 is the difference between the contract
10 price of 30 and the WAC price of 100.

11 So, the extent to which of let's
12 say that what was being allegedly charged
13 back seemed to be a lot more than what was
14 actually being shipped out or whatever,
15 ValueTrak actually provided a service,
16 very, very important on the generic side,
17 to make certain that, quite frankly, the
18 wholesalers or distributors weren't
19 playing any kind of games with it.

20 I think we also utilized this
21 just as, likewise, a control mechanism on
22 all our products, Kadian being one of
23 them, but the gross to net of the
24 chargeback issue was much less of an issue

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1 there because the contract price was
2 essentially the brand, AWP or WAC.

3 But again, I don't believe we
4 got the ValueTrak at this level of
5 specificity, which was store specific. It
6 was account specific as each account had a
7 specific EDI code of some sort. So that's
8 how ValueTrak was able to provide those
9 services, and we would track that way to
10 make certain that the chargeback data was
11 appropriate.

12 Q. ValueTrak allowed you to make
13 sure the chargeback data was appropriate
14 because it allowed you to see the numbers
15 of drugs being shipped from your customers
16 to their customers.

17 Is that right?

18 A. Again, well, as I described it,
19 ValueTrak provided shipment data from --
20 from wholesalers to the next where --
21 that's my understanding of ValueTrak, but
22 I won't profess to be an expert of it.

23 The reason that that is there,
24 and especially for controlled substances,

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1 would be the DEA 222 form, the DEA form
2 that any -- any order for any narcotic,
3 Schedule II to Schedule V, requires a
4 special form. So, on one hand, the
5 physician's writing prescriptions, so the
6 physician is licensed, validated. He
7 writes a -- he or she writes a
8 prescription, but the transfer of the --
9 of the materials, the bulk materials in
10 here, example bottles of 100 Kadian, no
11 order can come -- can be released
12 without -- without an accepted 222 form,
13 which is the DEA form.

14 So, pharmacy in Maryland that's
15 connected with AmerisourceBergen would
16 send a 222 order in to both us and to
17 McKesson and through our CSOS program,
18 which is controlled substance ordering
19 program, and then the suspicious order
20 monitoring program we had in place, as
21 well as our partners had in place, they
22 had their owns, would then validate and
23 look at those orders and determine whether
24 or not to release those orders.

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1 But anyway, the ValueTrak would
2 just track the -- validate, if you will,
3 the physical movement of those products.
4 We used it -- like I say --

5 Q. From your customers like a
6 distributor, for example, to the
7 pharmacies?

8 A. That's my understanding of
9 ValueTrak.

10 And we used that to validate --
11 we used that to validate chargebacks. I
12 believe we also used it to make certain
13 that, for example, there weren't shortages
14 in certain areas, potentially. Because,
15 again, when we sent it to a wholesaler, we
16 would generally send it -- the wholesalers
17 had national logistic centers or regional
18 logistic centers. So our contract with
19 Cardinal, for example, is every Cardinal
20 order, and Cardinal supports the entire
21 United States and Puerto Rico and other
22 parts of the world, but only licensed for
23 us in the U.S. We would get one order for
24 Cardinal. We would ship all of our

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1 product from our UPS distribution center
2 to the Cardinal national logistic center,
3 and then Cardinal would then determine how
4 that product got distributed around the
5 country. We had no visibility to what
6 Cardinal did with once it got to into
7 their control other than we would have
8 chargeback data so then we could see.
9 'Cause the other issue was sometimes we
10 would contract for a price with a certain
11 account. We'd send the product to
12 Cardinal. The account would say hey, how
13 come we don't have access to product. We
14 were like we sent it to Cardinal. So
15 that's a question for those folks in the
16 distribution chain.

17 Q. But you wanted visibility into
18 where Cardinal was sending your drugs so
19 that you could see whether or not the
20 chargebacks were correct?

21 MS. WELCH: Objection to form.

22 A. That's how I -- that's my
23 understanding of why ValueTrak was in --
24 in our infrastructure or whatever. We

1 subscribed to that service.

2 Q. Okay. And, could you also
3 obtain data from ValueTrak that showed
4 high-dispensing pharmacies for a certain
5 drug, irrespective of whether it was your
6 product or a competitor's product?

7 A. I don't think so.

8 Like I say, as I described to
9 you my understanding of ValueTrak, again,
10 I don't think it was retail at that level
11 of pharmacy level. It was, again, based
12 on the EDI or the license code for the --
13 the pharmacy or the -- so that's, I
14 believe it was all based on the EDI
15 systems and 222 forms, all stuff that was
16 at a more aggregated level, rather than at
17 a individual location level.

18 Q. And, so, when -- we've already
19 talked about how it was that you were able
20 to target the highest prescribers, but how
21 were you able to target the highest
22 dispensing pharmacies? Through what data
23 set?

24 MS. WELCH: Objection to form.

1 A. We didn't target high-dispensing
2 pharmacies.

3 Q. So when you did your email
4 blasts to thousands of pharmacies, you
5 just picked those randomly?

6 MR. DIAMANTATOS: Objection to
7 form.

8 MS. WELCH: Objection to form;
9 misstates testimony.

10 MR. DIAMANTATOS: Argumentative.
11 BY MS. BAIG:

12 Q. Or did you select certain
13 pharmacies to send your email blasts to?

14 A. Well, the example you showed me
15 with Keenmore [ph], or whatever it is, my
16 understanding of that was that they had
17 43,000 pharmacies in their program. So we
18 sent them to all of the pharmacies in that
19 example.

20 That's my understanding of that
21 example. But if you have a more specific
22 one, I'd be happy to comment on it.

23 Q. No. But my question really is
24 just about your understanding.

1 Was your understanding that you
2 had no way to track high-dispensing
3 pharmacies?

4 MS. WELCH: Objection to form.

5 A. Yes.

6 Q. Okay.

7 A. At Actavis. Other than,
8 again --

9 Q. No, but I don't just mean at
10 Actavis. I mean through anybody that -- I
11 mean, you didn't have necessarily the data
12 on the high-prescribing doctors either.
13 You're getting data from a variety of
14 service -- of companies.

15 And my question to you is
16 through any of those companies, or through
17 your own company, did you have visibility
18 into what were the highest prescribing
19 pharmacies?

20 A. I don't --

21 MS. WELCH: Objection to form.

22 A. I don't specifically recall that
23 or remember any of that. But that doesn't
24 mean it doesn't exist.

1 And if you had something you
2 could show me, I could comment on it.

3 Q. So you don't remember one way or
4 the other whether Actavis was -- was
5 looking at high-dispensing pharmacies for
6 purposes of promotion its own drugs?

7 MS. WELCH: Objection to form;
8 misstates testimony.

9 A. I don't believe we did that. I
10 don't recall us ever doing that, and I
11 don't think we had access to that
12 information.

13 Again, we -- we would get orders
14 in through 222 forms from our accounts,
15 which were, again, were not pharmacy
16 specific, and they would, again, they
17 would come either through the retail chain
18 or from the direct wholesaler. I believe,
19 actually, that they came in from the
20 McKessons, the Cardinals of the world, but
21 also, again, anybody requesting a
22 controlled substance would also have to
23 submit their own 222 forms. Everybody has
24 to be licensed by the DEA and in good

<p style="text-align: right;">Page 341</p> <p>1 standing. So, any order that came in, if 2 this came in directly to us or through 3 McKesson, I think it came directly to us, 4 but we used McKesson for fulfilment. So 5 that's why there was the computer -- the 6 controlled substance ordering system and 7 the suspicious order monitoring, to make 8 certain that there was alignment between 9 what the customers -- by the way, again, 10 through their DEA 222 form, that licensed 11 form, we just wanted to make certain that 12 it was legitimate order. 13 Q. Do you know who Mark Killion is? 14 A. Yeah. 15 Q. Who is that? 16 A. So, Mark was another one of the 17 four RSMs or DMs. I think he also had 18 responsibility for training of the sales 19 force from an Actavis perspective. 20 Q. Training of which sales force? 21 A. The Kadian branded sales force 22 which we contracted through with inVentiv. 23 MS. BAIG: Let's have this 24 document marked as Exhibit 20. Bates</p>	<p style="text-align: right;">Page 342</p> <p>1 stamp ACTAVIS09716 -- sorry, '1969 2 through '1971. 3 (Boothe Exhibit 20, email dated 4 June 21, 2011, Bates No. 5 ACTAVIS0971969 to 0971972, was marked 6 for identification, as of this date.) 7 BY MS. BAIG: 8 Q. What's an objection handling 9 workshop? Do you know? 10 A. I'd be speculating. It's not in 11 my normal vernacular. 12 Q. Towards the end of the first 13 page, there's a paragraph that starts: Is 14 there any way we can reference morphine 15 sulphate that's in the PK graph of our 16 sales aid? 17 Do you know what PK stands for? 18 A. I think it's pharmacokinetic or 19 something, but I don't know a hundred 20 percent certain. Something about blood 21 levels. 22 Q. Can we ask a prescriber about 23 their personal experiences, preferences of 24 Kadian and morphine sulphate?</p>
<p style="text-align: right;">Page 343</p> <p>1 Do you have an understanding 2 of -- of why he's asking that? 3 A. Again, reading this email for 4 the first time, 'cause I was not on the 5 email string, it looks like Mark, who I'll 6 again, as I said, was one of the regional 7 sales leads. So he had sales team 8 underneath him. And looks like he 9 canvassed his team of ABMs, area business 10 managers, for ideas or questions, 11 whatever, always were bubbling up as part 12 of a normal process. 13 To the extent of which any of 14 this went anywhere is unclear. 15 Q. And, what are ABMs again? 16 The area business managers. 17 A. Yes. 18 Q. And the current concern -- he 19 states at the bottom: The concern is that 20 we ask the area business managers to 21 target prescribers who write a large 22 amount of morphine sulphate but can't 23 really discuss anything about conversions. 24 We know cost is a key issue and ease of</p>	<p style="text-align: right;">Page 344</p> <p>1 prescribing due to reimbursement is why 2 they prescribe morphine sulphate. 3 What's your understanding of 4 what -- what that's referring to, ease of 5 prescribing due to reimbursement? 6 A. So, morphine sulphate is a 7 generic and Kadian is a brand. So 8 effectively, I mentioned before PBMs or 9 pharmacy benefit managers. Generally when 10 there's an available generic in the 11 therapeutic area, and this would be 12 morphine, the PBMs will -- will make it 13 more challenging and more difficult for 14 physicians to write branded products. 15 They of course will do generic first. 16 They'll have -- I don't remember the 17 language for it. They'll have prior 18 authorization, is an example of that, or 19 have other stops or have -- require 20 patients to fail. Those are some of the 21 lingo, from my -- my understanding. 22 So, when there's an available 23 generic, and, again, morphine sulphate, 24 again that might be the generic of Kadian</p>

<p style="text-align: right;">Page 345</p> <p>1 or it might be the generic of MS contin, 2 which is also morphine sulphate, then 3 again the -- it's easier -- with 4 physicians getting questions back from 5 patients who they've written a 6 prescription for and the pharmacy won't 7 fill, or with a high co-pay, that's 8 essentially what Mark is, or these ABMs 9 are funneling up as an area of potential 10 concern. 11 MS. BAIG: Let's have this 12 document marked as Exhibit 21. It's 13 Bates -- it's Bates stamped 14 ACTAVIS0960324 through '327. 15 (Boothe Exhibit 21, email dated 16 November 4, 2011, with attachment, 17 Bates No. ACTAVIS0960324 to 0960327, 18 was marked for identification, as of 19 this date.) 20 BY MS. BAIG: 21 Q. And, I would just like to know 22 from you whether this is -- is this an 23 example of a weekly ValueTrak report? Do 24 you know?</p>	<p style="text-align: right;">Page 346</p> <p>1 A. Which one? 2 Q. Well, I think it's one document. 3 I think they -- even though there's a few 4 different pages, but -- 5 A. Okay. 6 (Perusing document.) 7 So, the first page -- so, what 8 was the question? Sorry. 9 Q. Is this a ValueTrak report? 10 A. No. 11 Q. When I look at the third page, 12 at the top of the chart it says "Total 13 ValueTrak input tab." And, so, I was just 14 wondering if this is something that's 15 derived from the ValueTrak tool. 16 A. I -- I believe that these pages, 17 starting from '327 to some point, is the 18 raw data from ValueTrak. And the -- this 19 page '325 here is a summary or a 20 management dashboard that we created, 21 Actavis created, that incorporates in it 22 some of the ValueTrak information, but 23 actually has a lot more information in it 24 from a whole variety of sources.</p>
<p style="text-align: right;">Page 347</p> <p>1 So this is a, you know, a 2 management dashboard that brings in 3 multiple different sources of information 4 in a nice one-page consolidated tool for 5 folks like me and others to look at who've 6 got a lot of other things going on in the 7 day-to-day business. 8 Q. I see. 9 And, so, who generally created 10 reports like this? Or, do you know who 11 would have created this report? 12 A. This specific -- this page right 13 here? 14 Q. Mm-hm. 15 A. Again, this would have been -- I 16 think we utilized this across a variety of 17 our key products. 18 So, for the Kadian one it would 19 be Nathalie, but for the generic ones, it 20 might have been Jinping or someone in Mike 21 Perfetto's organization. 22 I believe we had several of 23 these, but I'm not a hundred percent sure. 24 Q. And if you look at the first</p>	<p style="text-align: right;">Page 348</p> <p>1 page in the email from Natalie Leitch to 2 you and others it says subject "Kadian 3 weekly update." 4 So, is -- was this something 5 that you received weekly? 6 A. Yes. 7 It's Nathalie. 8 Q. Okay. And, on -- at this 9 particular time, it shows that 10 OxyContin -- has OxyContin identified on 11 the pie chart as 30 percent. 12 That's 30 percent of what? 13 A. Okay. So, this chart that -- 14 pie chart says "Share of LAO TRX September 15 2011." And the source isn't listed here, 16 but -- so, LAO stands for long-acting 17 opioids. So this is the entire class, and 18 what you see in this pie chart is the mix, 19 the percentage of the entire class of TRX, 20 which I believe is total prescriptions, 21 but it could be total units. It wasn't 22 clear. We were sort of asking that. 23 So here you see, actually, that 24 Kadian is only 2.7 percent of the total</p>

1 class volume. Whereas OxyContin, which is
2 the -- that's the branded Purdue item, I
3 believe, is 30 percent of the TRXs for the
4 class of -- in September of 2011.

5 Q. So this is showing total market
6 share. This is not specific to Actavis.

7 Is that right?

8 A. Correct.

9 Again, the Kadian, we were the
10 only person who had -- well, again,
11 this -- 'cause the generic version of
12 Kadian would be bundled into the morphine
13 sulphate 'cause that's what the -- the
14 active ingredient is. Just like MS -- so
15 MS Contin would -- brand would be
16 somewhere in the all other, but generic
17 version of MS Contin and generic version
18 of Avinza, all the generic versions of a
19 product with morphine sulphate as the
20 active ingredient would be in that blue
21 wedge.

22 There you see fentanyl. Of
23 course that's the transdermal patch. But
24 the actual brand of fentanyl is called

1 that there was an alignment, a balance
2 between what was -- what we were shipping
3 into the channel and what was being pulled
4 through 'cause we wanted to avoid the risk
5 down the road of either being out of
6 product or having too much product in the
7 channel so we had product returns come
8 back, which are very, very expensive.

9 And, also, we looked at this as
10 a gauge to, since each of the customers
11 had certain buying frequency that they
12 would order on a weekly basis, on a
13 biweekly basis. So, and they had their
14 own triggering mechanism for when they
15 thought the inventory level would get to a
16 point to trigger a reorder. So every so
17 often we would to have call Amerisource
18 and say hey, we see you being less than
19 two weeks of inventory based on the
20 demand, you should place an order. Most
21 of them did it automatically, but
22 occasionally they would order not enough
23 or order too much. So this was part of
24 the management tool to see where we stood

1 Duragesic. And there you see that by
2 September 2011 the Duragesic brand, since
3 there were multiple generics available,
4 has really receded as a script component
5 of the total long-acting opioid market,
6 the brand, but the generics were a big
7 chunk of the prescriptions.

8 Q. And this total ValueTrak data
9 where it says "Sales out bottles," that's
10 all just Actavis bottles.

11 Is that right?

12 MS. WELCH: Objection to form.

13 A. Which page are you on?

14 Q. The first page of the Total
15 ValueTrak input tab.

16 MS. WELCH: Objection to form;
17 foundation.

18 A. Yeah, I -- honestly, I don't
19 know the specifics of ValueTrak. You
20 know, what's in, what's out.

21 We used it, again, like I said,
22 to validate chargebacks. And on the first
23 page in here when you see sort of sales in
24 and sales out, we wanted to make certain

1 at days on hand effectively at the
2 accounts, which is why you see, it's in
3 here somewhere. It's actually down at the
4 bottom stuff there, the inventory, days of
5 supply units. And, so, we were tracking
6 that to make certain that we were keeping
7 our manufacturing organizational aligned
8 with the practice so we had our product
9 available for our customers.

10 Q. So, this chart here which starts
11 on the third page --

12 A. Yeah, I don't know how this raw
13 data --

14 Q. -- this is Actavis specific?

15 A. I don't know.

16 Q. You don't know?

17 A. Like I said, I'm not familiar
18 with the specifics of the ValueTrak data.

19 Q. Okay.

20 A. Someone would know much more
21 than I would.

22 Q. If you wanted to know, who would
23 you ask?

24 A. Well, in this one, I would ask

1 Nathalie, I guess.
 2 Q. Okay.
 3 A. Came from her.
 4 Q. Can you tell me the difference
 5 between 852 data and 863 data?
 6 A. Wow.
 7 Q. Do you remember?
 8 MS. WELCH: Objection;
 9 foundation.
 10 A. Again, I -- those are EDI codes,
 11 electronic data exchange or interchange.
 12 Q. I believe so.
 13 But they're just referred to in
 14 numerous emails, the 852 data or the 863
 15 data.
 16 A. Again, one is, again, orders in
 17 and one's orders out, is my understanding.
 18 So, that's -- I don't know which
 19 is which. But, you know, by this time,
 20 the days used to be that folks would fax
 21 in orders. Now everything was electronic,
 22 and the EDI was a way to -- again, that's
 23 what tied the DEA 222 forms. That's what
 24 tied the chargebacks. Everything was done

1 date.)
 2 BY MS. BAIG:
 3 Q. And this, if you turn to page 2,
 4 I believe is the agreement that Actavis
 5 had with ValueCentric, or at least one of
 6 them.
 7 Is that your understanding as
 8 well?
 9 A. I'm just checking to see if the
 10 agreement was signed, if the -- who signed
 11 it.
 12 Okay. What was the question?
 13 Q. Is -- is it your understanding
 14 that this is an agreement between Actavis
 15 and ValueCentric for data services that
 16 we've been discussing?
 17 A. Yes.
 18 Q. Okay. And you signed this
 19 document?
 20 A. Yes.
 21 Q. And, it appears that this is
 22 from 2012.
 23 Wait a minute.
 24 Actually, from 2009. But you're

1 through electronic data.
 2 Q. When you say orders in and
 3 orders out, what do you mean?
 4 A. So, again, when -- when McKesson
 5 would place an order with us, they would
 6 send order, push a button on their
 7 computer, and it essentially would go
 8 through the EDI. So that would be an
 9 order in. And then we shipped the product
 10 out, we would send an invoice, and that
 11 would be we push a button and that would
 12 be the order out.
 13 And those are two different EDI
 14 codes. It might not be the two you
 15 referenced, but that's kind of how it was
 16 done.
 17 MS. BAIG: All right. Let's
 18 mark the next exhibit as Exhibit 22.
 19 It's Bates stamped 01898012 through
 20 '034.
 21 (Boothe Exhibit 22, email chain
 22 ending January 27, 2012, Bates No.
 23 ALLERGAN_MDL_01898012 to 01898134, was
 24 marked for identification, as of this

1 receiving an email here in 2012 asking if
 2 you wish to extend.
 3 Do you know whether -- whether
 4 you had an agreement in place like this
 5 with ValueCentric for the years 2009
 6 through 2012 or beyond?
 7 A. Again, this agreement covers
 8 February 2009. So yes for 2009.
 9 And, based on the email from Mr.
 10 Sullivan, it looks like it was going to
 11 expire in 2012. So it must have been a
 12 three-year deal.
 13 Q. And, if you turn to Schedule A
 14 on the Bates stamp page 01898023.
 15 Those are the -- those are the
 16 services that were being provided.
 17 Is that your understanding?
 18 A. Yes.
 19 Q. I believe you testified that the
 20 ValueTrak data was used primarily for
 21 purposes of gauging the accuracy of
 22 chargebacks.
 23 My question now is whether the
 24 ValueTrak data was also used for

<p style="text-align: right;">Page 357</p> <p>1 suspicious order monitoring?</p> <p>2 MS. WELCH: Objection;</p> <p>3 foundation.</p> <p>4 A. It may have been. I don't know</p> <p>5 for certain.</p> <p>6 Q. Do you recall using key opinion</p> <p>7 leaders at all while you were at Actavis?</p> <p>8 MR. DIAMANTATOS: Objection to</p> <p>9 form.</p> <p>10 A. Key opinion leaders for which</p> <p>11 product or --</p> <p>12 Q. For any products.</p> <p>13 MR. DIAMANTATOS: Objection to</p> <p>14 form.</p> <p>15 MS. WELCH: Objection to form.</p> <p>16 A. We had talked about key opinion</p> <p>17 leaders in the context of the Moxduo</p> <p>18 product that I referenced earlier that was</p> <p>19 never approved. I think as part of our</p> <p>20 prelaunch planning we had laid out as part</p> <p>21 of, again, a standard new pharmaceutical</p> <p>22 product launch, those are sort of the</p> <p>23 normal tools. I believe there had been</p> <p>24 some discussion about Kadian using a key</p>	<p style="text-align: right;">Page 358</p> <p>1 opinion leaders or speaker, but we never</p> <p>2 implemented those to my -- to my -- to my</p> <p>3 recollection.</p> <p>4 Q. Do you recall using key opinion</p> <p>5 leaders at Alpharma?</p> <p>6 A. Well, again at Alpharma -- well,</p> <p>7 which time frame at Alpharma?</p> <p>8 Q. Any time frame.</p> <p>9 A. So, when I was Alpharma in 2004</p> <p>10 and 2005, I just ran the generics</p> <p>11 business. So, to the extent of which</p> <p>12 Alpharma used key opinion leaders, that</p> <p>13 would not have been an area of my</p> <p>14 responsibility. And after 2005, the</p> <p>15 period of 2006 through 2009, Alpharma and</p> <p>16 Kadian were not part of Actavis. So I</p> <p>17 don't know exactly what Alpharma did</p> <p>18 between 2006 and 2009, and really don't</p> <p>19 know what Alpharma did for the brand group</p> <p>20 before. My responsibility was in the</p> <p>21 generic space.</p> <p>22 Q. So you've never -- you've never</p> <p>23 had any involvement working with key</p> <p>24 opinion leaders.</p>
<p style="text-align: right;">Page 359</p> <p>1 Is that right?</p> <p>2 MR. DIAMANTATOS: Objection to</p> <p>3 form.</p> <p>4 MS. WELCH: Objection to form.</p> <p>5 MR. DIAMANTATOS:</p> <p>6 Mischaracterizes the witness's</p> <p>7 testimony.</p> <p>8 A. What was the question again,</p> <p>9 please?</p> <p>10 Q. Have you had any involvement</p> <p>11 working with key opinion leaders?</p> <p>12 A. What do you mean by working</p> <p>13 with?</p> <p>14 Q. Overseeing your company's work</p> <p>15 with key opinion leaders.</p> <p>16 MS. WELCH: Objection to form.</p> <p>17 A. Again, I mentioned that during</p> <p>18 the Moxduo there was some discussion about</p> <p>19 key opinion leaders or advisory boards and</p> <p>20 such. So I was aware of that, the extent</p> <p>21 of which we did, but that product was</p> <p>22 never approved.</p> <p>23 I'm not aware of any key opinion</p> <p>24 leader activity associated with Kadian,</p>	<p style="text-align: right;">Page 360</p> <p>1 nor would we have any reason to have any</p> <p>2 sort of key opinion leader with any of the</p> <p>3 generic products.</p> <p>4 So, during my Actavis time, that</p> <p>5 answer is no.</p> <p>6 MS. BAIG: Let's have this</p> <p>7 document marked as Exhibit 23.</p> <p>8 (Boothe Exhibit 23, slide deck</p> <p>9 Advocacy Development Brainstorming</p> <p>10 Meeting April 25, 2006, Bates No.</p> <p>11 ALLERGAN_MDL_02513100 to 02513130, was</p> <p>12 marked for identification, as of this</p> <p>13 date.)</p> <p>14 BY MS. BAIG:</p> <p>15 Q. This is a document Bates stamped</p> <p>16 ALLERGAN_MDL_02513100 through '13130.</p> <p>17 Appears to be, in part, a slide deck</p> <p>18 titled "Kadian Advocacy Development</p> <p>19 Brainstorming Meeting April 25th, 2006."</p> <p>20 Do you recall any brainstorming</p> <p>21 meetings in or about 2006 regarding</p> <p>22 advocacy development?</p> <p>23 A. No.</p> <p>24 Again, this document, 2006, this</p>

1 asset was part of Alpharma.
 2 Q. Okay. So, you were at Alpharma
 3 at the time, right?
 4 A. No.
 5 Q. Do you have an understanding of
 6 what this document is?
 7 MS. WELCH: Objection;
 8 foundation.
 9 A. It's the first time I've seen
 10 it.
 11 Q. You haven't seen it before?
 12 A. Nope.
 13 Q. Okay. Was Alpharma marketing
 14 Kadian in 2006?
 15 MS. WELCH: Objection;
 16 foundation.
 17 A. Again, I didn't work for
 18 Alpharma in 2006. You'd have to ask
 19 Alpharma.
 20 My belief is yes.
 21 Q. When did Actavis begin marketing
 22 Kadian?
 23 A. We acquired the Kadian asset at
 24 the end of 2008. So we -- we assumed that

1 MS. WELCH: Objection;
 2 foundation.
 3 And objection to the extent
 4 you're asking him to comment on the
 5 work of the lawyers.
 6 A. I don't know.
 7 Q. Well, do you know how an
 8 Alpharma document would have made its way
 9 to Actavis?
 10 MR. DIAMANTATOS: Objection;
 11 form; foundation; calls for
 12 speculation.
 13 A. As part of the acquisition of
 14 the Kadian asset, I believe we got
 15 materials that Alpharma had. This may
 16 have been one of those. But I don't
 17 have -- I have no basis to confirm that or
 18 validate that.
 19 Q. And, do you see on the second
 20 page there's a slide entitled "KOL
 21 Development"?
 22 A. That's what the slide says, yes.
 23 Q. Were you aware of any KOL
 24 development at either Alpharma or Actavis

1 in some of the documents that we saw in
 2 the March, February, May time frame of
 3 2009 is when we determined, based on the
 4 reduction in scripts that we were seeing,
 5 that we should look at options for direct
 6 promotion for the Kadian asset as part of
 7 Actavis, which is when we engaged inVentiv
 8 and Triple i, some of the documents you've
 9 asked me about previously.
 10 Q. So, is there -- is it your
 11 belief, looking at this document for the
 12 first time, that this is an Alpharma
 13 document?
 14 MS. WELCH: Objection;
 15 foundation.
 16 A. Yes.
 17 Q. And, how do you come to that
 18 belief?
 19 A. The date says April 25th, 2006.
 20 It says Kadian. Alpharma owned Kadian in
 21 April 25th of 2006. So my belief is this
 22 is an Alpharma document.
 23 Q. And it would -- and, why would
 24 Actavis be producing an Alpharma document?

1 when you were there?
 2 MR. DIAMANTATOS: Objection.
 3 MS. WELCH: Objection to form;
 4 foundation; asked and answered.
 5 A. As I previously said, we at
 6 Actavis did no KOL activity for Kadian or
 7 any of our generic approved products.
 8 Q. Were you aware of any KOL
 9 development for any opioid products at
 10 Alpharma or Actavis?
 11 A. During which time frame?
 12 Q. Any time frame.
 13 A. Well, again, I worked for
 14 Alpharma from 2004 to 2005, and I worked
 15 for Actavis from 2006 to 2012. So, during
 16 my tenure at Actavis, 2006 to 2012, no
 17 awareness of any KOL programs for branded
 18 Kadian or any of the generics, and during
 19 my time at Alpharma, 2004 to 2005, I was
 20 solely involved in the generic side of the
 21 business. So I had no visibility to
 22 whatever programs Alpharma may or may not
 23 have been doing for the Kadian asset.
 24 Q. So, your answer is "no" then to

1 the question were you aware of any KOL
2 development for any opioid products at
3 Alpharma or Actavis?

4 MR. DIAMANTATOS: Objection;
5 form; asked and answered.

6 BY MS. BAIG:

7 Q. Is your answer "no" to that?

8 MS. WELCH: Same objections.

9 A. During the time frame that I was
10 at Alpharma, 2004 to 2005, I had no
11 awareness of any KOL development being
12 done by Alpharma. Doesn't mean it wasn't
13 happening, but it was not my area of
14 responsibility.

15 And from 2006 to 2012 during my
16 time at Actavis, I had no knowledge or
17 awareness of any KOL activity being
18 developed or in place. I referenced that
19 we were exploring it for the potential
20 Moxduo product, but we never implemented
21 it 'cause the product was never approved.

22 Q. So, in connection with your
23 response for Alpharma, answering that it
24 was not part of your responsibility is a

1 little bit different than answering
2 whether or not you were aware of it. And,
3 so, you could have become aware of it by
4 having communications with people at the
5 company or outside the company.

6 My question to you is were you
7 aware of any KOL development at Alpharma
8 at all ever?

9 MR. DIAMANTATOS: Objection;
10 form; foundation; calls for
11 speculation; asked and answered.

12 MS. WELCH: Same objections.

13 A. Again, I -- no, not aware of it
14 during my time at Alpharma for Alpharma.
15 And what happened after Alpharma separated
16 is really a question for Alpharma. I had
17 no specific knowledge of it.

18 Q. Did you have any knowledge of
19 what happened at Alpharma with respect to
20 KOL development after you left?

21 MR. DIAMANTATOS: Same
22 objections.

23 MS. WELCH: Same objections.

24 A. No.

1 Q. You never learned about that
2 from anybody?

3 MR. DIAMANTATOS: Same
4 objections.

5 A. No.

6 Q. And you never had any
7 communications with anybody about KOL
8 development at Alpharma or Actavis, apart
9 from the Moxduo?

10 MR. DIAMANTATOS: Same
11 objections.

12 A. Not that I'm aware of.

13 But if you have a document you
14 want me to comment on, I'd be happy to
15 review it.

16 Q. Were you aware that there were
17 third party organizations which assisted
18 pharmaceutical companies with KOL
19 development programs?

20 MR. DIAMANTATOS: Objection to
21 form.

22 MS. WELCH: Objection to form.

23 MR. DIAMANTATOS: Vague.

24 A. Yeah. What do you mean by that?

1 Q. Do you know what a KOL is?

2 A. Key opinion leader?

3 Q. Yeah.

4 So, are you aware of any third
5 party entities that assist pharmaceutical
6 organizations generally with key opinion
7 leader development programs?

8 MR. DIAMANTATOS: Objection;
9 form; vague.

10 A. I mean, personally I know that
11 they exist.

12 I don't specifically know what
13 companies do that.

14 Q. You don't know any companies
15 that do that?

16 A. If you want to provide me a list
17 of companies, I can let you know if I'm
18 aware of them.

19 I would imagine that -- again,
20 we were talking with inVentiv about Moxduo
21 and talking about KOLs. So inVentiv would
22 have been one of the companies that
23 potentially assist pharmaceutical
24 companies in key opinion leader

1 development. And there's lots of company
2 that provide the same sort of services as
3 inVentiv. So there's probably lots of
4 companies that were involved in key
5 opinion leader development, but I have no
6 personal participation or experience in
7 engaging key opinion leader programs
8 directly during my tenure at Actavis or
9 Alparma.

10 Q. So, apart from possibly
11 inVentiv, can you think of any other
12 companies that may be involved in key
13 opinion leader development?

14 MS. WELCH: Objection to form;
15 speculation.

16 MR. DIAMANTATOS: Asked and
17 answered.

18 A. You just have to provide me a
19 list if you want me to comment if I'm --

20 Q. I don't have a list, sir. My
21 question is about your recollection as you
22 sit here today.

23 Do you recall or do you know of
24 any third party companies that provide key

1 opinion leader development programs?

2 If the answer's no, just say

3 "no."

4 MR. DIAMANTATOS: Objection to
5 form.

6 MS. WELCH: Asked and answered.

7 MS. BAIG: It's been asked, but
8 it hasn't been answered.

9 MR. DIAMANTATOS: Objection to
10 instructing the witness how to answer
11 the question.

12 A. I think, like I said, there's
13 lots of pharmaceutical services companies
14 who would peddle key opinion leader
15 programs. I can't recall the names of
16 them right now.

17 Q. Okay. Have you ever heard of a
18 company called Genesis Health Care?

19 A. No.

20 Q. Do you know a Marta Brooks?

21 A. Who?

22 Q. Marta Brooks?

23 A. No.

24 Q. Have you ever heard of KOL

1 mapping?

2 A. No.

3 MS. WELCH: Objection to form.

4 BY MS. BAIG:

5 Q. You have no understanding of
6 what that means?

7 A. Is that a company or that's a
8 thing?

9 Q. I think it's a thing.

10 MS. WELCH: Objection to form.

11 A. Okay.

12 Q. The mapping of key opinion
13 leaders, have you ever heard of that?

14 A. No.

15 I mean, it sounds like -- seems
16 reasonable.

17 Q. Okay. So, if you look at the
18 first page of the -- the first page of the
19 chart here, which is --

20 A. So you want me to comment on an
21 Alparma document from 2006 that I have
22 never seen before at a company I didn't
23 work for at the time?

24 Q. I have a couple questions, yes.

1 Can you turn to the Bates stamp
2 page ended at '106?

3 A. There's no number.

4 Oh, there it is. Yep.

5 Q. The top it says "2006 Kadian
6 speaker training meeting attendees with
7 KOL mapping results." It's dated April
8 25, 2006. And it appears to list a number
9 of doctors, their areas of specialty, and
10 their regions of practice.

11 Do you see that?

12 MS. WELCH: Objection to form;
13 foundation.

14 A. That's what the document says.

15 Q. Okay. Have you ever heard of
16 this sort of KOL mapping whereby a
17 organization can come in and help a
18 pharmaceutical company by mapping key
19 opinion leaders for them?

20 MS. WELCH: Objection to form;
21 foundation; asked and answered.

22 A. No.

23 MR. DIAMANTATOS: Assumes facts.

24

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1 BY MS. BAIG:
 2 Q. You never heard of that at any
 3 of the conferences, pharmaceutical
 4 conferences that you've attended or in
 5 speaking with colleagues in the business?
 6 MS. WELCH: Objection to form.
 7 A. Heard of what?
 8 Q. This idea of key opinion leader
 9 mapping.
 10 MS. WELCH: Objection to form;
 11 asked and answered.
 12 A. Again, I'm aware of key opinion
 13 leaders, what they are, but I've never
 14 been personally involved in any sort of
 15 key opinion leader programs other than,
 16 like I mentioned, that there was some work
 17 being done to contemplate developing that
 18 as part of the Moxduo launch, but that was
 19 not an area of specific participation for
 20 me. It would have been the team that was
 21 working on that prelaunch activity, which
 22 would have been some of the Actavis
 23 employees and some of the inVentiv folks,
 24 but it never got to my level of review or

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1 understanding or participation.
 2 Q. And you never talked with
 3 colleagues about the notion of the key
 4 opinion leader mapping outside of the
 5 Moxduo context?
 6 MS. WELCH: Objection to form;
 7 mischaracterizes his testimony.
 8 A. What do you mean by colleagues?
 9 You mean fellow employees of Actavis?
 10 Q. No, not necessarily. I mean
 11 people that you meet at trade shows,
 12 colleagues in the business, in the
 13 pharmaceutical business.
 14 A. When I go to the trade shows,
 15 I'm not really talking with colleagues.
 16 I'm talking with customers.
 17 Q. Trade shows, conferences.
 18 You see a wide variety of
 19 people, I'm sure, in your daily business
 20 activities.
 21 My question is have you talked
 22 with them about this idea of key opinion
 23 leader mapping?
 24 A. No.

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1 MR. DIAMANTATOS: Objection to
 2 form; vague.
 3 BY MS. BAIG:
 4 Q. You never have, that you can
 5 recall?
 6 MR. DIAMANTATOS: Objection to
 7 form; vague.
 8 A. No.
 9 Q. Do you know what the ACT
 10 Communication Network is?
 11 A. Which page is this on?
 12 Q. The one ending in Bates stamp
 13 numbers '123.
 14 A. No.
 15 MS. WELCH: Objection to form;
 16 foundation.
 17 BY MS. BAIG:
 18 Q. Next page I see, two pages later
 19 Advanced Customized Therapy.
 20 Have you ever heard of that
 21 company?
 22 MS. WELCH: Objection to form;
 23 foundation.
 24 A. No.

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1 MS. WELCH: If you're done with
 2 that exhibit, can we take a break?
 3 MS. BAIG: Sure.
 4 THE VIDEOGRAPHER: We're going
 5 off the record.
 6 The time is 4:33 p m.
 7 (Recess taken.)
 8 THE VIDEOGRAPHER: We're going
 9 back on the record.
 10 The time is 4:50 p m.
 11 MS. BAIG: All right. Let's
 12 have this document marked as
 13 Exhibit 24. It's Bates stamped
 14 ALLERGAN_MDL_01860386 through
 15 01860397.
 16 (Boothe Exhibit 24, email chain
 17 ending May 6, 2011, Bates No.
 18 ALLERGAN_MDL_01860386 to 01860397, was
 19 marked for identification, as of this
 20 date.)
 21 MS. BAIG: It starts as an email
 22 from Nancy Baran dated May 6th, 2011.
 23 BY MS. BAIG:
 24 Q. Do you know who Cegedim is, a

1 company called Cegedim?
 2 A. Yeah. Well, they were -- they
 3 were a firm that provided pharmaceutical
 4 services. They had a bunch of stuff
 5 underneath them. But, Dendrite used to be
 6 part of Cegedim.
 7 Q. And BuzzeoPDMA, is there a
 8 connection between BuzzeoPDMA and Cegedim?
 9 MS. WELCH: Objection;
 10 foundation.
 11 A. It says Cegedim compliance
 12 solution powered by BuzzeoPDMA.
 13 So, yeah, somehow there's some
 14 connection.
 15 Q. Okay. And, have you seen this
 16 agreement before?
 17 A. I'm looking at it. It's -- you
 18 know, I'm not on the email. I don't see
 19 any signatures on it. I don't see my
 20 signature on it. That doesn't mean I -- I
 21 have or have not seen it. I just don't
 22 specifically recall.
 23 Q. Do you know what relationship
 24 Actavis had, if any, with BuzzeoPDMA?

1 Is that your understanding, that
 2 Actavis moved forward with Dendrite to
 3 implement a suspicious order monitoring
 4 system?
 5 A. Yes.
 6 I mean, again, Dendrite was part
 7 of Cegedim, as was this Buzzeo group.
 8 Q. Okay. And she goes on to state
 9 that: A copy of their proposal service
 10 agreement is attached. The team would
 11 like to take the next steps.
 12 Do you recall whether this was
 13 the agreement that was ultimately
 14 executed, or no?
 15 A. Not --
 16 MS. WELCH: Objection to form;
 17 foundation.
 18 A. Not for certain.
 19 Again, I don't see a signature
 20 on it, but --
 21 Q. If you look at the -- the fourth
 22 page from the end, you see a Schedule 1
 23 Services and Service Fees?
 24 A. '394 page?

1 A. As it said here, we -- we con --
 2 we discussed with them, I believe we
 3 contracted with them to -- to update our
 4 suspicious order monitoring platform.
 5 We -- we were constantly looking at ways
 6 to continue to expand and improve our --
 7 our service, and Buzzeo, I guess, we must
 8 have -- I believe we engaged with them, at
 9 this time frame, to incorporate their
 10 capabilities to our existing suspicious
 11 order monitoring program.
 12 Q. And you see the first sentence
 13 of the email from Nancy Baran, she states:
 14 We have Doug's approval to move forward
 15 with implementing a suspicious order
 16 monitoring system.
 17 Do you see that?
 18 A. Yes.
 19 Q. And, would you imagine that Doug
 20 is Doug Boothe, is you?
 21 A. I would think so.
 22 Q. And she goes on to state: We
 23 have looked at a few options and the team
 24 has agreed to move forward with Dendrite.

1 Q. Yes.
 2 A. Okay. Yeah.
 3 Q. And it states: Project Number
 4 1. Suspicious order monitoring
 5 statistical model development and
 6 consulting support.
 7 Do you see that?
 8 A. Yes.
 9 Q. Was it your understanding that
 10 you did receive, ultimately, a statistical
 11 model development and consulting support
 12 from Cegedim?
 13 A. Again, we -- my -- my
 14 recollection is we had one in place
 15 before. So, if this was a new one or
 16 improved one or expanded one.
 17 Yes, I believe we did engage
 18 with Buzzeo or Cegedim to do that in the
 19 2011 time frame.
 20 Q. And, do you know how -- how it
 21 changed from the one that was in place
 22 before?
 23 A. I would say it was probably more
 24 sophisticated, but I wouldn't know exactly

1 what the changes were. It may have been
2 more automated, may have had more
3 statistical modeling in it, per se.

4 Q. Do you recall if the one that --
5 do you recall anything about the one that
6 existed before?

7 A. No.

8 MS. WELCH: Objection to form.

9 BY MS. BAIG:

10 Q. Do you remember what the
11 suspicious order monitoring system, or
12 whether there was a suspicious order
13 monitoring system in place at Alpharma?

14 MR. DIAMANTATOS: Objection to
15 form; foundation.

16 A. Alpharma in what time frame?

17 Q. When you were there.

18 A. Well, again, I was at Alpharma
19 in 2004 and 2005, and I wasn't involved in
20 the branded side.

21 On the generic side, we were
22 selling -- I don't believe we -- again, we
23 were not selling generic Kadian at that
24 time. We were not selling generic

1 fentanyl at the time. We were not selling
2 generic Opana at the time.

3 I don't believe we -- we had the
4 need or the requirement, based on the
5 product portfolio, to have a suspicious
6 order monitoring system, but I could be --
7 again, 2004, 2005, my recollection could
8 be not complete.

9 MS. BAIG: We'll have this
10 document marked as Exhibit 24 -- 25.
11 Bates stamp ACTAVIS804497 through
12 804563.

13 (Boothe Exhibit 25, email dated
14 December 21, 2011, with attachment,
15 Bates No. ACTAVIS0804497 to 0804563,
16 was marked for identification, as of
17 this date.)

18 MS. BAIG: It appears to start
19 as an email from Ali Iffat to Terry
20 Fullem, dated December 21st, 2011,
21 entitled "Actavis FDC Launch
22 Preparation."

23 BY MS. BAIG:

24 Q. Do you know what's referred to

1 by FDC launch preparation?

2 A. It says: Preparation of a fixed
3 dose combination, FDC asset, indicated for
4 acute pain.

5 That's what the second page
6 says.

7 Q. Thank you.

8 Are you familiar with Campbell
9 Alliance?

10 A. Yes.

11 Q. What is Campbell Alliance?

12 A. That was a division of inVentiv
13 that would be their strategic division or
14 their, sort of, brand launch division,
15 internal consulting group, my
16 recollection.

17 Q. And, do you recall Actavis
18 receiving services from, specifically,
19 Campbell Alliance?

20 A. My recollection is they, again,
21 they proposed this project kickoff. So we
22 contracted for something with Campbell
23 Alliance.

24 And, again, fixed dose

1 combination asset, that's Moxduo. So all
2 this work for Campbell Alliance was
3 specific to the Moxduo activities we were
4 doing.

5 Q. And, Ali Iffat is -- he's from a
6 Campbell Alliance, correct?

7 A. Yes.

8 Q. And, did you communicate with
9 him ever?

10 A. I may have.

11 Do you have a document you want
12 to show me I can comment on?

13 Q. I'm just asking if you recall
14 communicating with him.

15 A. I may have.

16 Q. Do you recall communicating with
17 anybody at Campbell Alliance?

18 A. If I look at the 40 -- the '4503
19 group, Paul Mignon, but he actually was
20 inVentiv. Rohit Sood, I definitely
21 communicated with. Stephen Corby I
22 remember. Alan and Keith Kelly, I don't
23 specifically remember too much. Neil
24 Gray.

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1 Q. What page are you looking on?
 2 A. I'm on page '4503 under "Project
 3 teams."
 4 Q. When did you first work with
 5 Campbell Alliance?
 6 A. Well, again, this document is
 7 December 21st, 2011. So somewhere in that
 8 time frame. We had no previous engagement
 9 with Campbell Alliance on any of the other
 10 Actavis generic or the FDA-approved Kadian
 11 product. This was purely brought in
 12 related to the prelaunch planning
 13 potential for the Moxduo product. And
 14 what Campbell Alliance, if you look at the
 15 documents, they had their whole, you know,
 16 launch planning module. I think it -- I
 17 kind of -- I think it was like product
 18 launch in a box, or they call it launch
 19 playbook. So, they had a platform and
 20 experience in potentially launching
 21 branded promoted pharmaceutical products,
 22 which is why we engaged with them for
 23 Moxduo.
 24 Q. And, do you see on the page

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1 Bates stamped '4502 it starts
 2 "Introduction and Project Objectives"?
 3 A. '4502, yes.
 4 Q. And there's three objectives:
 5 1, to launch strategy and planning; 2,
 6 pricing research and analysis; and 3, key
 7 opinion leader identification and
 8 influence mapping.
 9 Do you see that?
 10 A. Yep.
 11 Q. And under the "Key opinion
 12 leader identification and influence
 13 mapping" it states: Identify KOLs with
 14 the greatest levels of influence
 15 nationally and regionally.
 16 Do you see that?
 17 A. Yep.
 18 Q. Was it your understanding that
 19 Campbell Alliance was capable of such
 20 identification?
 21 A. They may or may not be, you
 22 know, specifically available. They,
 23 again, may be able to pull from
 24 third-party resources and such.

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1 This -- Campbell Alliance was
 2 like a strategy organization, so sort of a
 3 front end. They may be identifying
 4 strategy and tactics, and then had their
 5 work gone on further, they would identify
 6 maybe specific partners, in line with what
 7 you had asked me about earlier.
 8 Q. And, the second bullet says:
 9 Develop a series of national and regional
 10 KOL maps based on sphere of influence.
 11 Do you see that?
 12 A. Sure.
 13 This -- this whole thing is,
 14 again, it's a draft document about a
 15 meeting about a launch -- prelaunch
 16 planning for a potentially approved FDA
 17 controlled substance.
 18 Q. And, so, do you know whether or
 19 not they actually performed this
 20 identification of KOLs?
 21 A. For the purposes of the Moxduo
 22 product?
 23 Q. Correct.
 24 A. They may have. I don't believe

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1 that they did, but they may have.
 2 And if you have a document, I'd
 3 be happy to review it.
 4 Q. But you don't recall seeing one?
 5 A. If you have a document, I'd be
 6 happy to review it.
 7 I don't specifically recall
 8 seeing one.
 9 Q. If you turn a few pages further
 10 you get to the document Bates stamp '4506
 11 and it's titled "Project Overview Key
 12 Questions."
 13 Do you see that?
 14 A. Mm-hm.
 15 Q. And item 3 under the key
 16 questions is: KOL planning.
 17 Do you see that?
 18 A. Yeah.
 19 Q. And there are a number of
 20 bullets. The first is: Who are the key
 21 opinion leaders in the acute space?
 22 Second: What degree of
 23 influence does each KOL have on
 24 prescribing decisions both nationally and

1 regionally?
 2 Do you know how an organization
 3 such as Campbell Alliance would go about
 4 finding the key opinion leaders with the
 5 most influence?
 6 MR. DIAMANTATOS: Objection to
 7 form; foundation.
 8 MS. WELCH: Objection to form;
 9 foundation.
 10 A. No.
 11 I mean, to me this is a very
 12 generic pitch book where Campbell Alliance
 13 had done this multiple times. They're
 14 pitching their services. These charts are
 15 all very pretty, consultancy [sic] speech
 16 with -- and they basically added "Actavis"
 17 to the bottom right and pitched us.
 18 Q. But you don't recall having any
 19 communication with Campbell Alliance or
 20 anyone else that would suggest to you how
 21 it was that they would be able to identify
 22 the key opinion leaders with the largest
 23 degree of influence?
 24 A. Just keep reading the documents.

1 A. Yep.
 2 Q. Do you know if that web-based
 3 survey was ever completed?
 4 A. I don't believe we actually
 5 signed up for any of this work, or
 6 specifically for the KOL, but we may have.
 7 And, I don't know. You'd have
 8 to show me the document.
 9 My recollection on Campbell is
 10 we were underwhelmed what they delivered
 11 against what they proposed.
 12 Q. You were underwhelmed with what
 13 they delivered?
 14 A. That's my recollection.
 15 Q. What do you recall them
 16 delivering?
 17 A. A bunch of Power Point slides
 18 like this.
 19 Q. So your recollection is that you
 20 were underwhelmed by the pitch and so that
 21 you didn't sign up with them, or that you
 22 signed up with them and were underwhelmed
 23 by the product they delivered?
 24 A. We did something with Campbell.

1 Q. Is your answer no, you don't
 2 recall?
 3 A. To best answer, I'm going to
 4 read the document and understand if they
 5 show any of it in here.
 6 (Pause.)
 7 So, the materials are all
 8 illustrative examples where they're
 9 looking at possible profiles based on
 10 their associations or their organizations,
 11 conferences, opinion leader management
 12 service. Looks like they have a webpage
 13 here that may or may not be real. It says
 14 "draft." So, maybe they have this in
 15 their tool kit or maybe, again, they
 16 utilize a third party.
 17 So, no, I don't know exactly how
 18 they were planning on doing it. It's not
 19 clear from the documents.
 20 Q. On the next page under "KOL
 21 planning" do you see where it says:
 22 Design and program a web-based survey?
 23 A. Which page are you on? Sorry.
 24 Q. The one ending in '507.

1 I don't know if it was all three of these
 2 proposed work streams or not. And if it
 3 was all three, whatever their output was
 4 was underwhelming, and we got to, at some
 5 point beyond that, to do it ourselves or
 6 do with other portions of the inVentiv
 7 group.
 8 So I have not been a referral
 9 for Campbell down the road.
 10 Q. When you say that at some point
 11 you decided to do it yourselves, did you
 12 actually start any sort of KOL mapping for
 13 Moxduo internally?
 14 A. Well --
 15 MS. WELCH: Objection;
 16 foundation.
 17 A. And it may have been through
 18 Campbell or inVentiv.
 19 But, like I say, I testified
 20 before I know there was a part of the
 21 prelaunch planning, there was some
 22 discussion about key opinion leaders and
 23 speaker bureaus and such. I don't know
 24 exactly what was ultimately decided, how

1 much -- how far it was developed, who --
 2 who worked on it. But I also know it was
 3 never implemented because the product was
 4 never approved.

5 Q. Do you remember why it wasn't
 6 approved?

7 MS. WELCH: Objection; asked and
 8 answered.

9 A. As I testified earlier, the FDA
 10 advisory board did not give it a positive
 11 recommendation, and the agency did not
 12 approve it.

13 Q. But do you know why?

14 A. Well, again, you'd have to ask
 15 the FDA or read the letter, but basically
 16 my -- my belief was, my understanding was
 17 that subject to the clinical trial data
 18 that was provided as part of the
 19 application, that we didn't -- we didn't
 20 demonstrate to the agency, QRX Pharma did
 21 not demonstrate to the agency the
 22 necessary degree of efficacy versus
 23 placebo that would justify an approval.

24 Q. Did you have an understanding

1 that it was not approved because of the
 2 fear that it would be widely subject to
 3 abuse?

4 A. No.

5 MR. DIAMANTATOS: Objection to
 6 the form; foundation; calls for
 7 speculation; asked and answered.

8 Q. Did you ever have an
 9 understanding that it was not approved
 10 because it was considered to be too
 11 dangerous?

12 MS. WELCH: Objection to form.

13 A. No. I mean, there was a
 14 communication back from the agency why it
 15 was, to QRX Pharma as to the reason why
 16 the application was not approved which was
 17 the basis for the appeal which you read
 18 somewhere in the documents here.

19 So, if you show me that
 20 document, I'd be happy to comment on it,
 21 to the best of my ability, but I'm far
 22 from an expert on clinical studies or on
 23 basis for FDA new drug approvals.

24 Q. But it was not your

1 understanding that it was denied approval
 2 because it presented certain risks?

3 MS. WELCH: Objection to form.

4 BY MS. BAIG:

5 Q. Is that right?

6 A. What do you mean by certain
 7 risks?

8 Q. Any risks of addiction, abuse,
 9 any sort of dangers associated with the
 10 drug.

11 MS. WELCH: Objection to form;
 12 vague.

13 A. It's a Class II narcotic. So,
 14 by its classification, those would be the
 15 risks known that would be in the black
 16 box, just like all the other Class II
 17 narcotics, both general and branded. So
 18 those risks were understood and would have
 19 been part of the label.

20 Q. Those risks were understood by
 21 who?

22 A. By the FDA, by the physician
 23 community, by manufacturers. That's why
 24 it's a controlled substance.

1 Q. And, you never had an
 2 understanding that Moxduo was not approved
 3 because the risks were too great?

4 MS. WELCH: Objection to form;
 5 vague.

6 BY MS. BAIG:

7 Q. Is that right?

8 MR. DIAMANTATOS: Asked and
 9 answered.

10 A. My understanding is that Moxduo
 11 was not approved because the FDA did not
 12 agree to the clinical endpoints being hit
 13 subject to the criteria for approval for
 14 pain management relative to placebo.

15 Q. I see.

16 So, it was not -- had nothing to
 17 do with the risks associated with taking
 18 Moxduo?

19 MS. WELCH: Objection to form.

20 MR. DIAMANTATOS: Objection to
 21 form; asked and answered five times.

22 MS. WELCH: And misstates his
 23 testimony.

24 A. No.

1 Q. If you go to the page stamped
2 ACTAVIS804532.

3 A. '532.

4 Q. Do you see there's a list of
5 centers of excellence there?

6 A. Yes.

7 Q. And, what's your -- what is your
8 understanding of what that is a list of?

9 MS. WELCH: Objection to form;
10 foundation.

11 A. Well, again, this particular
12 chart is an illustrative example, and the
13 centers of excellence not -- those look
14 like hospitals or hospital chains.

15 Q. Being identified in this context
16 why?

17 MS. WELCH: Objection to form;
18 foundation.

19 A. Again, I look at the document
20 and I believe that the -- again, you're
21 asking me to interpret what Campbell
22 Alliance is presenting. It looks like
23 they're utilizing some degree of number of
24 mentions nationally as an indication of

1 the relative value or benefit of someone
2 affiliated with one of these centers in
3 the context of potentially putting
4 together some sort of key opinion leader
5 program.

6 That's my interpretation of the
7 document, but I'm far from an expert, as
8 I've testified, on how key opinion leaders
9 are developed or identified.

10 Q. And two pages further, do you
11 see it says "Project approach survey
12 finalization"?

13 A. Mm-hm.

14 Q. And there's question at the top:
15 Is there an existing target list or other
16 Actavis screening criteria to be used for
17 recruitment?

18 Do you know whether there was,
19 in fact, an existing target list or other
20 screening criteria?

21 A. To me, this is a consulting firm
22 asking the client to do their work for
23 them.

24 So, I don't know.

1 Q. On the next page under "Key
2 Opinion Leader Profiling," do you see a
3 list under "Profile information can
4 include"?

5 A. Yep.

6 Q. And there's a number of
7 different items listed there, one of which
8 is "Advisory board participation."

9 Do you see that?

10 A. Yep.

11 Q. So, this suggestion here, as I
12 read it, is that physicians who
13 participate on advisory boards may have
14 more influence than others.

15 Is that how you read it?

16 A. Other whom?

17 Q. Than physicians that don't have
18 participation on advisory boards.

19 MS. WELCH: Objection to form;
20 foundation.

21 A. That's one of 16 different
22 things or whatever more on this checklist.

23 Again, this is the kitchen sink.

24 I hope you're getting a sense

1 that I wasn't too impressed with this
2 work.

3 Q. Understood.

4 Have you participated on
5 advisory boards?

6 A. Me personally?

7 Q. Mm-hm.

8 A. No.

9 Why would I? I'm not a
10 physician.

11 Q. Have you -- have you sat in or
12 been informed or educated by advisory
13 boards?

14 MS. WELCH: Objection to form.

15 A. On what?

16 Q. On opioid drugs.

17 A. No.

18 We -- we never had an advisory
19 board.

20 Q. Well, did you have an advisory
21 board for Moxduo?

22 A. There was discussion about
23 either creating an advisory board to
24 create a key opinion as part of our

1 prelaunch planning.
 2 I believe QRX Pharma had an
 3 advisory board, who was our partner, but
 4 that was not an Actavis activity that was
 5 something we generated.
 6 Q. Do you remember whether or not
 7 Actavis employees participated or were
 8 educated by that advisory board?
 9 A. No.
 10 Q. You don't remember one way or
 11 the other, or they weren't?
 12 A. I don't believe that they were.
 13 MS. BAIG: All right. Let's
 14 have this document marked as Exhibit
 15 26.
 16 And, it's Bates stamped
 17 ACTAVIS0718476 through '8533. It
 18 starts as an email from Terri Nataline
 19 to Carla Hedrick.
 20 (Boothe Exhibit 26, email dated
 21 July 9, 2012, with attachment, Bates
 22 No. ACTAVIS0718476 to 0718533, was
 23 marked for identification, as of this
 24 date.)

1 FDA-approved long-acting opioid products,
 2 both brand and generic. So it was like a
 3 consortium.
 4 Q. But Actavis was engaging
 5 Campbell Alliance, right? Isn't what that
 6 what your signature is, or no?
 7 A. We are basically paying our
 8 component of the long-acting opioid REMS,
 9 just like the other active marketers which
 10 is on page -- the next page. So I don't
 11 think, again, I don't think -- we
 12 basically signed on. It was an FDA
 13 requirement. So we -- we complied with
 14 it.
 15 And, again, Terri Nataline can
 16 provide you more information to the extent
 17 of which we were actively engaged, or
 18 again, we just -- we went along with the
 19 program as a requirement to continue to
 20 market our products, our approved
 21 products.
 22 Q. And REMS refers to risk
 23 evaluation and mitigation strategies.
 24 Is that right?

1 BY MS. BAIG:
 2 Q. Carla Hedrick is?
 3 A. Yeah, Carla was one of the
 4 associates at Actavis working for Terri
 5 Nataline.
 6 Q. And, if you turn to page 2 of
 7 the document on the purchase requisition
 8 page.
 9 Is that your signature?
 10 A. Yes.
 11 Q. And this was a purchase order
 12 for long-acting opioid REMS.
 13 Is that right?
 14 A. Yes.
 15 Q. And it's with Campbell also --
 16 it's with Campbell Alliance, right?
 17 A. Yep.
 18 Q. And, do you recall engaging
 19 Campbell Alliance?
 20 A. Again, Actavis didn't
 21 specifically engage Campbell Alliance.
 22 Campbell Alliance was the -- the entity
 23 that did the class-wide REMS for all the
 24 companies that were actively marketing

1 A. Yes.
 2 Q. And, what was your understanding
 3 as to what Campbell Alliance was going --
 4 was going to do with respect to REMS?
 5 A. Well, I'd really have to read
 6 this full document to understand exactly
 7 what they were going to do, but --
 8 Q. Do you have a general
 9 understanding of -- of what they were
 10 going to do with respect to the REMS
 11 program?
 12 MS. WELCH: Objection to form.
 13 BY MS. BAIG:
 14 Q. Based on your recollection?
 15 A. I believe that, again, Campbell
 16 was providing the industrywide long-acting
 17 opioid REMS program, and so all
 18 manufacturers who had approved products
 19 that were marketed were required to be
 20 part of this program.
 21 So, effectively, we were paying
 22 in, and the -- the purpose of the program
 23 was to educate physicians who were writing
 24 the prescriptions for long-acting opioids

<p style="text-align: right;">Page 405</p> <p>1 about risk evaluation and mitigation</p> <p>2 strategies. So it was a program that was</p> <p>3 going to outbound to all physicians who</p> <p>4 had written any long-acting opioid</p> <p>5 prescription ranging from OxyContin to</p> <p>6 whatever's on that list, and they would be</p> <p>7 trained, communicated with, there might</p> <p>8 have been some certification required.</p> <p>9 But Campbell was providing the service on</p> <p>10 behalf of all the active marketers of</p> <p>11 long-acting opioids, consistent with a</p> <p>12 discussion, negotiation agreement with the</p> <p>13 FDA and likely the DEA at the time.</p> <p>14 So, all active participants were</p> <p>15 brought into this REMS program, rather</p> <p>16 than having -- in the past, every company</p> <p>17 had individual risk maps, or maybe</p> <p>18 individual REMS. So, the purpose of this</p> <p>19 program was to want to have one consistent</p> <p>20 program that reiterated the -- the risk</p> <p>21 associated with Class II or Class III</p> <p>22 narcotics, especially here long-acting</p> <p>23 opioids. So, they were providing a</p> <p>24 service for all the manufacturers.</p>	<p style="text-align: right;">Page 406</p> <p>1 Q. What was your understanding of</p> <p>2 Actavis's responsibilities under the law</p> <p>3 with respect to preventing diversion?</p> <p>4 MR. DIAMANTATOS: Objection to</p> <p>5 form.</p> <p>6 MS. WELCH: Objection to form.</p> <p>7 MR. DIAMANTATOS: Calls for a</p> <p>8 legal conclusion.</p> <p>9 MS. WELCH: Same objection.</p> <p>10 A. What's the question again,</p> <p>11 please?</p> <p>12 Q. What was your understanding of</p> <p>13 Actavis's responsibilities under the law</p> <p>14 with respect to preventing diversion?</p> <p>15 MS. WELCH: Objection to form;</p> <p>16 calls for a legal conclusion.</p> <p>17 Objection to the extent it would</p> <p>18 call for you to divulge privileged</p> <p>19 information.</p> <p>20 A. What do you mean by diversion?</p> <p>21 Q. Have you ever heard the term</p> <p>22 "diversion" used before?</p> <p>23 A. Yeah.</p> <p>24 Q. And, so, what's your</p>
<p style="text-align: right;">Page 407</p> <p>1 understanding of what diversion is?</p> <p>2 A. Well, in what context?</p> <p>3 Q. In the context of controlled</p> <p>4 drugs.</p> <p>5 A. You'd have to describe to me</p> <p>6 your definition of that. I was thinking</p> <p>7 diversion in other context.</p> <p>8 Q. So, in the context of controlled</p> <p>9 substances, have you heard of the word</p> <p>10 "diversion" before?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And, what's your</p> <p>13 understanding of what that means with --</p> <p>14 within the context of controlled</p> <p>15 substances?</p> <p>16 A. Potentially somewhere between --</p> <p>17 again, when I -- when a customer or</p> <p>18 pharmacy submits a valid DEA 222 form to</p> <p>19 order product and it's received by the</p> <p>20 wholesaler or received by the manufacturer,</p> <p>21 such as Actavis, and then when Actavis</p> <p>22 would then ship or distribute the product</p> <p>23 to the wholesaler or directly to the</p> <p>24 pharmacy, if somehow that product, once it</p>	<p style="text-align: right;">Page 408</p> <p>1 was at the pharmacy level or at the</p> <p>2 wholesale level, ended up going somewhere</p> <p>3 else than where it was ended to go, which</p> <p>4 would be outside or after the chain of</p> <p>5 custody that we had for the product, that</p> <p>6 would be my understanding of diversion.</p> <p>7 Q. So, what was your understanding</p> <p>8 of Actavis's responsibilities under the</p> <p>9 law with respect to preventing diversion</p> <p>10 of opioids?</p> <p>11 MS. WELCH: Objection to form.</p> <p>12 MR. DIAMANTATOS: Objection to</p> <p>13 form; foundation.</p> <p>14 MS. WELCH: Objection to the</p> <p>15 extent it calls for a legal</p> <p>16 conclusion.</p> <p>17 MR. DIAMANTATOS: Asked and</p> <p>18 answered.</p> <p>19 BY MS. BAIG:</p> <p>20 Q. Using your definition of</p> <p>21 diversion.</p> <p>22 MS. WELCH: Same objections.</p> <p>23 A. Again, I don't think we had</p> <p>24 responsibility for, accountability for</p>

1 preventing diversion. We had
 2 responsibility and accountability for
 3 making certain that the orders that we
 4 received were valid from licensed
 5 pharmacies and were within our suspicious
 6 order monitoring thresholds as it was
 7 described earlier then with the Buzzco
 8 model or the more statistical model. So
 9 we -- that was our responsibility.

10 Once it goes outside of our
 11 chain of custody, we have no capability or
 12 responsibility or accountability to -- or
 13 at least my understanding, I'm not a
 14 lawyer, as it relates to diversion. So,
 15 once we ship a valid order to a wholesaler
 16 or ship a valid order to a distributor or
 17 another smaller wholesaler, our chain of
 18 custody is finished at that point.

19 Q. You had an understanding that
 20 Actavis was required to have a suspicious
 21 order monitoring program in place,
 22 correct?

23 A. Yes.

24 Q. And, did you understand that

1 Actavis was required to identify and halt
 2 shipments of suspicious orders to its
 3 distributor clients?

4 MS. WELCH: Objection to form.
 5 Objection to the extent it calls
 6 for a legal conclusion.

7 A. Well, again, I mean, again, all
 8 of the orders were valid. The issue was
 9 whether or not they were within the
 10 threshold.

11 So, again, any order that came
 12 in for a controlled substance came from a
 13 licensed company with a valid 222 DEA
 14 recommendation or valid pharmacy license.
 15 So, all those orders were valid.

16 What our suspicious order
 17 monitoring system would do is to identify
 18 if, for example, based on the historical
 19 purchasing of -- of an account, if there
 20 was a much higher order number. That
 21 happened all the time. There are lots of
 22 reasons why there was numbers that were
 23 above the historical pattern. Could be
 24 that the business got a new account. So,

1 if somehow we agreed to a price to
 2 distribute one of our controlled
 3 substances to an account like Kroger's,
 4 and Kroger's we would ship to directly,
 5 but since there wasn't a history of that
 6 additional volume to Kroger's, the system
 7 would appropriately identify that as maybe
 8 being an aberration. And then the team,
 9 the customer service team and the UPS team
 10 would -- they would probably go back
 11 sometimes to the sales -- or, they would
 12 go back to the account and have them
 13 justify the rationale for that. That
 14 happened very, very frequently as part of
 15 our active daily process. But all of it
 16 starts with a legitimate 222 DEA form.

17 Which, by the way, all these
 18 things were shared with the DEA, 'cause
 19 that's the process, from a licensed
 20 pharmacy, a request to purchase our
 21 approved -- our FDA-approved product.

22 Q. For orders that were deemed
 23 suspicious, did you have an understanding
 24 that Actavis had a responsibility to

1 report and halt shipment?

2 MS. WELCH: Objection to form.
 3 Objection to the extent it calls
 4 for a legal conclusion.

5 MR. DIAMANTATOS: Objection;
 6 asked and answered.

7 A. Again, we wouldn't have to halt
 8 shipment 'cause when that order would come
 9 in, we would -- before we would release it
 10 for shipment, we would actually look at
 11 that order and determine whether or not it
 12 was appropriate and do the appropriate
 13 activity to validate the rationale, to get
 14 the information as a support for it. So,
 15 all this happened well before any product
 16 was potentially shipped to a wholesaler or
 17 regional distributor.

18 So, if that's the definition, I
 19 think we were in compliance with that.

20 Q. So, you're saying that you would
 21 look to see if there was a justification
 22 for the unusually high order, and if there
 23 was a justification, then it would be fine
 24 and it would be shipped, correct?

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1 MR. DIAMANTATOS: Objection;
2 form; mischaracterizes the witness's
3 testimony.

4 MS. WELCH: Same objections.

5 A. Again, our -- again, our --
6 first of all, the orders were all DEA 222
7 forms.
8 So, was the DEA notified on
9 every order? Yes. Every 222 form goes to
10 the DEA. So there's always notification
11 to the DEA.

12 And, as I said, there -- based
13 on the ordering pattern and, for example,
14 some accounts had multiple facilities, so
15 they may place an order for different
16 locations, and we would have that -- this
17 is by the distribution center, rather, you
18 know, not to the end pharmacy. So we
19 would see situations where a distribution
20 center of AmerisourceBergen may have been
21 ordering a thousand bottles a week and
22 then -- for three months and then suddenly
23 they ordered 1500 bottles. That would
24 actually, based on the thresholds of our

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1 system, that would be identified as a --
2 an order to investigate, not a fraudulent
3 order, just a -- and then with that, we
4 would go back to the customer service team
5 and/or the commercial rep would call the
6 purchaser at that and say, you know, why
7 did you order 1500. A place like
8 AmerisourceBergen, which by the way, I
9 think they had 62 distribution centers at
10 one point. So they were also managing
11 their inventory within the dist -- so,
12 once we shipped it to AmerisourceBergen in
13 the past, one of their locations, if they
14 opted to move it from one of their
15 locations to one of the other locations in
16 their network and then because of that it
17 triggered a reply order from when they
18 moved it from one to there and the
19 distribution center back to us, we didn't
20 have that information. So when that order
21 came in, if it potentially raised a
22 signal, then we would go and investigate
23 it and if that's what the rationale, that
24 was the basis for the customer describing

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1 why they moved product around, why they
2 needed to order it back for our -- for
3 their distribution center and we believe
4 that that was appropriate, we would have
5 then released the order.

6 Q. And, what if you got a rationale
7 that you did not believe it was
8 appropriate, did you halt shipment?

9 MR. DIAMANTATOS: Objection to
10 form.

11 A. Yeah, we would not -- we would
12 halt shipment. We would not accept the
13 order.

14 And many times we would get
15 orders in, and based on the information,
16 we would say there's no justification for
17 ordering 10,000 bottles. Your model --
18 our say 1500, 2,000. We would then adjust
19 the order. They would submit a new DEA
20 222 form, and if the order was within that
21 threshold, we would accept it and we would
22 ship it. And I believe that that happened
23 frequently.

24 Q. And, to the extent that that

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1 happened, that would be saved in the
2 files.

3 Is that right?

4 MS. WELCH: Objection to form;
5 foundation.

6 A. The files.

7 Q. There was a record that was kept
8 of orders that was -- that were flagged as
9 being of interest or suspicious, and the
10 justifications received or not received
11 and whether they were shipped or not
12 shipped.

13 Is that right?

14 MS. WELCH: Objection to form;
15 foundation.

16 A. That would be my understanding,
17 some sort of, yes, some sort of record
18 because, again, from a compliance
19 perspective, we operate also under a DEA
20 license, and the DEA had the right and the
21 authority to come in to inspect and
22 validate, which they did, you know, on a
23 frequent basis. So that would likely be
24 something that they would want to monitor

1 and validate that our suspicious order
2 monitoring was compliant with their
3 expectations, which they did.

4 MS. BAIG: Let's have this
5 document marked as the next exhibit,
6 please. It's Bates stamped 02 --
7 ALLERGAN_MDL_02081243 through '81245.
8 (Boothe Exhibit 27, email chain
9 ending August 18, 2009, Bates No.
10 ALLERGAN_MDL_02081243 to 02081245, was
11 marked for identification, as of this
12 date.)

13 MS. BAIG: And it starts as an
14 email from Nancy Baran dated August
15 18th, 2009, to you and others.

16 THE WITNESS: Okay.

17 BY MS. BAIG:

18 Q. And, do you recall receiving
19 this email from Nancy Baran in which she
20 states: I believe our process is not
21 current and there is significant room for
22 improvement.

23 In the second line?

24 A. I received the email, yes.

1 I'm saying that the DEA on --
2 per their practice, would come in and
3 audit for these sorts of things. I don't
4 know exactly when or when that happened,
5 but there would be a record of it because
6 they would provide a record of the
7 inspection or the audit. Somewhere in the
8 files. I'm not sure of us being outside
9 of compliance. And Nancy, to her credit,
10 was identifying or proposing to get more
11 people involved to continue to invest in
12 the space.

13 Q. And, so, a little further down
14 it states: An order appears on the
15 suspicious order report if it meets the
16 following criteria: if the amount ordered
17 by the customers is 25 percent over the
18 customer's rolling average.

19 Do you see that?

20 A. Yes.

21 Q. And, did you have an
22 understanding that 25 percent was the
23 threshold that was always used, or did
24 that change?

1 Q. And she goes on to state: I
2 have recommended that we bring in a few
3 key players from different functional
4 areas, all of whom have shared ownership
5 in the process. The main goal is to
6 confirm that we are meeting our obligation
7 as a manufacturer of these controlled
8 drugs.

9 A. That's great. Yeah. That's --
10 Nancy was our customer service
11 representative. So she was identifying
12 her belief that we could improve --
13 continue to invest and improve our
14 systems.

15 Just because we weren't current,
16 doesn't mean we're not in compliance.
17 Which, again, subject to a DEA
18 investigation, there were no findings that
19 we were not in compliance with the
20 expectations on suspicious order
21 monitoring or suspicious order reporting.

22 Q. Were you subject to a DEA
23 investigation on that issue?

24 A. No.

1 MS. WELCH: Objection to form;
2 foundation.

3 A. At the time of this email in
4 2009, that -- that was -- I guess that was
5 one of the criteria. We may have moved it
6 lower or may have raised it up as the
7 system became more sophisticated. I --

8 Q. You don't recall?

9 A. Don't recall what?

10 Q. You don't recall if it was
11 actually moved or not, if 25 percent was
12 always the threshold used?

13 A. At the time of this email, Nancy
14 is indicating that that's one of the --
15 that's only -- that's one of the
16 thresholds is 25 percent of the customer's
17 rolling average, and she's proposing to
18 increase it to 40 percent for abuse-type
19 drugs.

20 Q. And, why would she propose to
21 increase it from 25 to 40 percent for
22 abuse-type drugs?

23 It seems like if you increase
24 it, you're going to flag fewer orders.

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1 Is that your understanding?
 2 MS. WELCH: Objection to form;
 3 foundation.
 4 MR. DIAMANTATOS: Objection to
 5 form; foundation; calls for
 6 speculation.
 7 A. I think she's commenting, again
 8 this is her email, that the volume -- she
 9 wanted to have better systems and controls
 10 so there's less human intervention.
 11 Q. Do you know if there was any
 12 suspicious orders ever recorded before
 13 2010?
 14 MS. WELCH: Objection to form;
 15 foundation.
 16 A. Reported to whom?
 17 Q. Recorded. Flagged or recorded
 18 in your documents.
 19 I can represent to you that I
 20 have not seen any, and I'm just wondering
 21 if you know that suspicious orders were
 22 tracked and recorded prior to 2010.
 23 MS. WELCH: Objection to form;
 24 foundation.

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1 A. I would ask the DEA
 2 administrator for the business 'cause
 3 they're the ones who would be responsible
 4 for communication with the agency and
 5 making certain we were compliant. So that
 6 suspicious order -- and we actually had a
 7 compliance officer. So I would start,
 8 first and foremost, with the compliance
 9 officer.
 10 Q. Do you know whether Actavis
 11 outsourced its duty to -- to monitor
 12 suspicious orders to any third parties?
 13 MS. WELCH: Objection to form.
 14 A. If we engaged a third party as
 15 part of our suspicious order system, like
 16 Buzzeo, for example in previous -- that
 17 doesn't mean we've abdicated our
 18 responsibility or accountability 'cause
 19 ultimately it's our license. It's our DEA
 20 license.
 21 So, if there were third parties
 22 involved that we brought in because they
 23 brought specific expertise or systems,
 24 that would have been great, but ultimately

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1 A. Well, again, this email is dated
 2 2009. So, yes, we had a suspicious order
 3 process. And here it does talk about
 4 flagging orders and holding orders and
 5 such and that anything above the 25
 6 percent threshold would be in that case.
 7 So, if there were orders that
 8 were above that threshold, the answer to
 9 that would be yes.
 10 Q. And they would have been
 11 documented?
 12 MS. WELCH: Objection to form;
 13 foundation.
 14 MR. DIAMANTATOS: Asked and
 15 answered.
 16 A. In whatever system was required,
 17 and, yes, there's some sort of
 18 documentation. I don't know if it's a
 19 spreadsheet. I don't know if it was --
 20 Q. Do you know where -- where you
 21 would look for that documentation if you
 22 wanted to find it?
 23 MS. WELCH: Objection to form;
 24 foundation.

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1 we were accountable for our suspicious
 2 order monitoring system.
 3 And we also partnered with UPS.
 4 They had an existing one as well. So, we
 5 had two -- two participations there.
 6 Q. Can you think of anybody else
 7 that you partnered with for your
 8 suspicious order monitoring procedures
 9 other than UPS?
 10 MS. WELCH: Objection to form.
 11 A. Procedures, or?
 12 Q. Suspicious order monitoring.
 13 A. Well, again, you showed me a
 14 document before from Buzzeo. So I believe
 15 that we engaged Buzzeo at some point.
 16 That was in 2011.
 17 We -- part of the reason we
 18 chose UPS, prior to engaging with UPS, we
 19 actually did our own distribution. We had
 20 our own facility in Maryland. We made the
 21 decision, which was a great one, I
 22 believe, to go to a company that's world
 23 class in logistics and shipping, world
 24 class investment in IT systems and, at the

1 time, had a computerized suspicious order
 2 system or computerized CSOS which was
 3 computerized -- controlled substance --
 4 controlled substances ordering system,
 5 CSOS, that included a baked-in suspicious
 6 order monitoring platform.

7 So, we believe we had the best
 8 in class by partnering with UPS, which is
 9 something we did in this time frame. And
 10 then we augmented that with Buzzeo over
 11 time.

12 Q. Okay. Any other outside
 13 entities that you can recall being
 14 involved?

15 A. Not that I can recall.

16 There may have been others, but
 17 those are the ones I specifically
 18 remember.

19 Q. Did you ever interact directly
 20 with the DEA?

21 A. Me personally?

22 Q. Mm-hm.

23 A. I don't believe so.

24 Q. Did Actavis seek to try to

1 increase DEA quotas that governed the
 2 manufacture and distribution of
 3 prescription opioids?

4 MR. DIAMANTATOS: Objection to
 5 form; time frame.

6 BY MS. BAIG:

7 Q. Ever while you were at Actavis.

8 A. Yes.

9 MS. WELCH: Objection to form.

10 A. Yes. I mean, as I mentioned
 11 before, the process for -- first of all,
 12 all quota was governed by the DEA and as
 13 part of the operations of that is a
 14 licensed facility would have to request
 15 quota. The reason why we would request
 16 additional quota could be couple-fold.
 17 One is we had products in active
 18 development. So we would have had been
 19 granted a quota for R&D quota, but in
 20 order to do validation, prepare for a
 21 commercial launch of an approved
 22 controlled substance, we would need
 23 additional quotas. So that was one
 24 instance where we would request additional

1 quota.

2 Also, for example, if there was
 3 a disruption in the market and we were
 4 able to engage additional customer
 5 distribution for some of the controlled
 6 substances, we would actually then submit
 7 a quota update revision request to the
 8 agency, and with that we'd have to
 9 demonstrate past orders, as well as to
 10 show the customers and their requested
 11 volumes. That was another reason why we
 12 would potentially ask for additional quota
 13 from the DEA.

14 As well as following the IMS or
 15 following the third-party systems. If the
 16 actual market itself, the category was
 17 growing at a certain rate, 5 percent, 10
 18 percent, 20 percent, that information
 19 would be the basis for the year-over-year
 20 request to increase the quota with the
 21 commiserate amount. So if we were at 5
 22 percent market share or 10 percent market
 23 share and the market was growing 10
 24 percent, we would ask the following year

1 for the same quota plus 10 percent so we
 2 could maintain our position in the market.

3 Those are three examples of when
 4 we would request additional quota from the
 5 DEA.

6 Q. Do you recall receiving a letter
 7 from the FDA with respect to the Kadian
 8 marketing, a warning letter?

9 A. Yes.

10 Q. Okay. And, were you involved in
 11 preparing the response?

12 MR. DIAMANTATOS: Objection to
 13 form.

14 A. I was not personally involved in
 15 preparing the response because that would
 16 have been done by our regulatory
 17 organization and our outside FDA advisors,
 18 but the ultimate final response letter,
 19 actually, I believe it was submitted by
 20 Ms. Nataline, who's head of regulatory,
 21 but I'm sure there was a conversation
 22 about what was in, what commitments were
 23 being made, and as part of those
 24 commitments, as leader of the

1 organization, I wanted to make sure that
 2 we had the resources and the commitment
 3 investment-wise to support that.
 4 MS. BAIG: So, we'll mark this
 5 as Exhibit 28. It's Bates stamped
 6 ALLERGAN_MDL_00780097 through
 7 00780473. It's a large document. But
 8 it starts with the facsimile from the
 9 FDA to you dated February 18th, 2010.
 10 (Boothe Exhibit 28, email chain
 11 ending July 11, 2012, with attachment,
 12 Bates No. ALLERGAN_MDL_00780096 to
 13 00780473, was marked for
 14 identification, as of this date.)
 15 MS. BAIG: And then I'll have
 16 marked as the next exhibit, because
 17 they're companion exhibits --
 18 BY MS. BAIG:
 19 Q. For this document, do you recall
 20 receiving this from the FDA?
 21 A. Yes.
 22 MS. WELCH: Objection to form.
 23 And, are you speaking about the
 24 letter? You've marked a document

1 Q. You never did?
 2 A. Are you referring to the GPHA?
 3 Q. Were you on a -- did you serve
 4 on the board of GPHA?
 5 A. Yes.
 6 Q. What does GPHA stand for again?
 7 A. Generic Pharmaceutical
 8 Manufacturing Association.
 9 Q. Yes, that's right.
 10 How long did you serve on that
 11 board?
 12 A. 2006 til 2014 or '15 with maybe
 13 some breaks in between subject to my
 14 employment at certain places.
 15 Q. Okay.
 16 A. That's not an advisory board
 17 though.
 18 Q. What is the GPHA?
 19 A. It's the -- it's the lobbying
 20 association for generic manufacturers.
 21 It's an organization based in Washington,
 22 D.C. that generic companies have the
 23 option to be members of, and then the GPHA
 24 advocates on behalf of generic

1 that's hundreds of pages, so.
 2 MS. BAIG: I'm talking about the
 3 letter.
 4 This document was produced
 5 together by Actavis.
 6 A. So, in answer to your question,
 7 do I remember receiving a warning letter,
 8 I'm looking at the fax machine.
 9 If I didn't -- I mean, it came
 10 to my attention, my address. So, yes, I
 11 received it. I reviewed it.
 12 Q. And, in response to this letter,
 13 were there changes that were made with
 14 respect to the Kadian promotional
 15 materials?
 16 MS. WELCH: Objection to form.
 17 A. Yes.
 18 Q. And some of those we talked
 19 about earlier, correct?
 20 MS. WELCH: Objection to form.
 21 A. Could you be more specific?
 22 Q. Did you serve on a generic
 23 manufacturers advisory board?
 24 A. No.

1 manufacturers both federally and at state
 2 level on issues that are pertinent to
 3 generic manufacturers. It's the generic
 4 equivalent of what everybody's more
 5 familiar with called PhRMA, which is the
 6 branded pharmaceutical lobbying advocacy
 7 organization.
 8 Q. And, did you serve on the PhRMA
 9 board as well?
 10 A. No. We were never members of
 11 PhRMA.
 12 Q. Okay. And, what about NACDS?
 13 A. No.
 14 Q. Did you attend NACDS meetings?
 15 A. Yes.
 16 Q. And, with respect to the
 17 lobbying, GPHA, do you recall working on
 18 any lobbying that would have impacted
 19 opioids?
 20 MR. DIAMANTATOS: Objection to
 21 form; foundation; assumes facts.
 22 MS. WELCH: Objection to form.
 23 A. No.
 24 And, again, I'm not a

1 professional lobbyist. So again, the GPHA
2 was a lobbying advocacy organization, but
3 the lobbying was done by the professionals
4 at GPHA.

5 Q. But you don't recall Actavis
6 being involved or working with lobbyists
7 for any legislation that would have
8 impacted or involved opioids?

9 MS. WELCH: Objection to form.

10 A. No.

11 MR. DIAMANTATOS: Foundation;
12 asked and answered.

13 BY MS. BAIG:

14 Q. Are you familiar with the
15 American Pain Society?

16 A. Not really, but seems like it's
17 a medical association of some sort.

18 Q. You don't recall any Actavis
19 involvement with the American Pain
20 Society?

21 MR. DIAMANTATOS: Objection to
22 form.

23 A. I believe we provided -- we
24 invested in something at some point to the

1 tune of about \$15,000 in anticipation of
2 the Moxduo approval and launch.

3 Q. How about the HDA Research
4 Foundation?

5 A. No.

6 Q. The National Wholesale Druggists
7 Association?

8 A. What's that?

9 Q. National Wholesale Druggists
10 Association?

11 A. NWDA?

12 MS. WELCH: I'm sorry. What's
13 the question?

14 BY MS. BAIG:

15 Q. Do you recall -- do you have any
16 familiarity with that association?

17 MR. DIAMANTATOS: Objection to
18 form.

19 A. HDMA I'm familiar with.

20 What's the other one?

21 Q. The National Association of
22 Chain Drug Stores?

23 A. Yes. NACDS, yes.

24 Q. And, what was your involvement,

1 if any, with the National Wholesale
2 Druggists Association?

3 A. None.

4 Q. What was Actavis's involvement,
5 if any, with National Wholesale Druggists
6 Association?

7 MR. DIAMANTATOS: Objection to
8 form; foundation.

9 A. None.

10 National Wholesale
11 Druggist Association, I don't think it's
12 such a thing.

13 Q. National -- so, for the National
14 Association of Chain Drug Stores, did
15 Actavis have any involvement with that?

16 A. We participated -- we were not
17 members of NACDS. Those are -- the
18 members of NACDS would be the national
19 chain drug stores, such as Walgreens or
20 CVS or Rite Aid.

21 We would attend -- as I
22 testified previously, they had two
23 industrywide events. One was the annual
24 meeting in April, and I would attend that,

1 and one was the fall technical meeting,
2 which I had attend -- stopped attending
3 probably in the 2010, 2011-ish time frame.

4 Q. How about the American Pain
5 Foundation, are you familiar with that
6 foundation?

7 MR. DIAMANTATOS: Objection to
8 form; asked and answered.

9 A. No.

10 Q. You're not familiar with it?

11 A. (No response.)

12 Q. Do you know whether Actavis had
13 any involvement with the American Pain
14 Foundation?

15 MR. DIAMANTATOS: Objection to
16 form; foundation; asked and answered.

17 A. I think I testified that we
18 paid -- we participated -- made some sort
19 of payment to participate or attend one of
20 their events to the tune of \$15,000 in
21 anticipation of the Moxduo. I don't know
22 who went. It wasn't me.

23 Q. I think that was the American
24 Pain Society.

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1 A. Okay. So that was that one.
 2 What's the other one?
 3 Q. American Pain Foundation.
 4 A. No, I'm not familiar with them
 5 then.
 6 Q. How about the American Academy
 7 of Pain Medicine?
 8 A. No.
 9 Q. Not familiar with it?
 10 A. I mean, just -- I think you're
 11 describing medical associations that are
 12 in the pain space, so they would be known
 13 to people who are active in that space.
 14 That's just not me.
 15 MS. WELCH: I think we're, our
 16 calculation, at the seven-hour mark or
 17 slightly over.
 18 Is that correct?
 19 MS. BAIG: What's our time?
 20 THE VIDEOGRAPHER: About 7:05.
 21 So seven hours and five minutes.
 22 MS. WELCH: Are you wrapping up?
 23 MS. BAIG: I'm wrapping up.
 24

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1 Bates No. ALLERGAN_MDL_01871495 to
 2 01871609, was marked for
 3 identification, as of this date.)
 4 BY MS. BAIG:
 5 Q. Do you know who that is?
 6 A. No.
 7 Q. Do you know what KI -- KAI
 8 Research is?
 9 A. No.
 10 Q. No.
 11 And, it purports to be
 12 sending -- well, it's a forward of an
 13 email from Terri Nataline to Miriam
 14 Fogelson at KAI Research, subject line
 15 "DDMAC warning letter correspondence
 16 Kadian." And it purports to be forwarding
 17 on the correspondence between FDA and
 18 Actavis regarding Kadian.
 19 She says: Hopefully it doesn't
 20 crash your computer.
 21 Do you see that?
 22 A. Yes.
 23 Q. Okay. And, were you generally
 24 familiar with the correspondence between

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1 BY MS. BAIG:
 2 Q. Were you involved at all with
 3 communications with the FDA about the REMS
 4 program?
 5 MS. WELCH: Objection to form.
 6 A. Me personally?
 7 Q. Yes.
 8 A. There may have been documents
 9 went out under my name on behalf of
 10 Actavis, but generally any communication,
 11 any engagement with the FDA would have
 12 been through the regulatory team or the
 13 legal team. So that would be Terri
 14 Nataline or John LaRocca.
 15 MS. BAIG: All right. I have
 16 one last document, and that's marked
 17 Exhibit 29.
 18 This document is Bates stamped
 19 ALLERGAN_MDL_017871495 through
 20 '9193 -- no, sorry. Through '71609.
 21 It starts as an email from Terri
 22 Nataline to mfogelso.
 23 (Boothe Exhibit 29, email chain
 24 ending July 23, 2010, with attachment,

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1 Actavis and the FDA?
 2 A. Yes.
 3 Q. Regarding the warning letter?
 4 A. Yes.
 5 Q. And, does this appear to be a
 6 true and correct copy of that
 7 correspondence?
 8 A. Again, I don't know if
 9 everything is -- and again, I don't know
 10 who Miriam Fogelson is, so.
 11 But, essentially, we received
 12 the warning letter. Our obligation was to
 13 respond a certain time frame, which we
 14 did, which I think was within 15 days,
 15 with our response. And I think, between
 16 Terri Nataline and the Actavis resources
 17 and the resources of the FDA, there was a
 18 significant back and forth for several
 19 weeks or months or so as both parties
 20 worked through and got to agreement as to
 21 the outcome of the warning letter request.
 22 But, while that was going on, by
 23 the way, we suspended all -- all use of
 24 any of the materials that were previously

1 in place that had been used for many, many
 2 years. These were, I think, materials we
 3 inherited from Alpharma. Stopped that.
 4 And, ultimately, one of the outcomes was
 5 some sort of a Dear Pharmacist and a Dear
 6 Patient letter that went out ultimately
 7 under my signature in the August-ish time
 8 frame of 2010.

9 Q. Which I think is included in
 10 there.

11 MS. BAIG: I don't have any
 12 further questions. Thank you.

13 THE WITNESS: Okay. Thank you,
 14 very much.

15 THE VIDEOGRAPHER: This marks
 16 the end of the testimony given by Doug
 17 Boothe.

18 We are going off the record.

19 The time is 5:58 p.m.

20 (Deposition adjourned at
 21 approximately 5:58 p.m.)
 22
 23
 24

ERRATA

2 PAGE / LINE / CHANGE / REASON
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ACKNOWLEDGMENT

1 STATE OF)
 2
 3 :ss
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 5 COUNTY OF)
 6

7 I, DOUGLAS BOOTHE, hereby certify
 8 that I have read the transcript of my
 9 testimony taken under oath in my
 10 deposition of January 17, 2019; that the
 11 transcript is a true and complete record
 12 of my testimony, and that the answers on
 13 the record as given by me are true and
 14 correct.
 15
 16
 17

18 DOUGLAS BOOTHE

19 Signed and subscribed to before me this
 20 _____ day of _____, 2019.
 21
 22

23 Notary Public, State of
 24

CERTIFICATE

1 STATE OF NEW YORK
 2
 3 COUNTY OF NEW YORK
 4

5 I, Marie Foley, RMR, CRR, a
 6 Certified Realtime Reporter and Notary
 7 Public within and for the State of New
 8 York, do hereby certify:

9 THAT DOUGLAS BOOTHE, the witness
 10 whose deposition is hereinbefore set
 11 forth, was duly sworn by me and that such
 12 deposition is a true record of the
 13 testimony given by the witness.

14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage, and that I am
 17 in no way interested in the outcome of
 18 this matter.

19 IN WITNESS WHEREOF, I have
 20 hereunto set my hand this 21st day of
 21 January, 2019.
 22
 23

24 MARIE FOLEY, RMR, CRR

